

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

JOSE SANCHEZ,

Petitioner.

24-AF-0030-AG-023
(Claim No. 721020639)

January 10, 2025

DECISION AND ORDER

On November 14, 2023, Jose Sanchez (“Petitioner”) filed a *Hearing Request* seeking a hearing concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the judges of the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

FINDINGS OF FACT

Petitioner executed and delivered a Promissory Note (“Note”), dated December 1, 2017, in favor of the Secretary in the principal amount of \$50,027.99. In exchange for the Note, HUD advanced funds to Petitioner’s primary mortgage lender as a means of providing foreclosure relief to Petitioner.

The Note required payment on November 1, 2047, or when the first of the following events occurs:

- i. Borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar Security Instruments insured by the Secretary, or
- ii. The maturity date of the primary note has been accelerated, or
- iii. The primary note and related mortgage, deed of trust or similar Security Instrument are no longer insured by the Secretary, or
- iv. The property is not occupied by the purchaser as his or her primary residence.

On or about March 24, 2022, the Federal Housing Administration insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the primary mortgage was paid in full. Accordingly, the Note became due. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$50,027.99 as the unpaid principal balance as of November 2, 2023;
- ii. \$333.36 as the unpaid interest on the principal balance at 1.00% per annum through November 2, 2023;
- iii. \$1,503.91 as the unpaid penalties and administrative costs as of November 2, 2023; and
- iv. interest on said principal balance from November 3, 2023, at 3.00% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding ("Notice"), dated August 3, 2023, was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms.

A Wage Garnishment Order, dated September 7, 2023, was sent to Petitioner's employer. Petitioner has been garnished three times, totaling \$1,485.89. HUD proposes a wage garnishment repayment schedule of \$301.02 per bi-weekly period, or an amount equal to 15% of Petitioner's disposable income.

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. See 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. See 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or are legally unenforceable. Id.

As evidence of the Petitioner's indebtedness, the Secretary filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* together with a copy of the Note and the Declaration of Brian Dillon, wherein Mr. Dillon, Director of HUD's Asset Recovery Division, states the amount of the debt owed by Petitioner. The express language of the Note, signed and agreed to by Petitioner, states under "BORROWER'S PROMISE TO PAY" that "[i]n return for a loan received from Lender, Borrower promises to pay the principal sum of FIFTY THOUSAND TWENTY-SEVEN and 99/100 Dollars (U.S. \$50,027.99), to the order of Lender." The Note further states that payment shall be made at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington DC 20410. Accordingly, the copy of the Note submitted by HUD under oath is sufficient to establish the existence and the amount of the debt owed by Petitioner.

Petitioner does not contest the existence of the debt. However, Petitioner claims that garnishment of his wages would cause him financial hardship and requests that this case be set for an oral hearing wherein Petitioner can provide testimony. In wage garnishment cases such as

Petitioner's, an oral hearing is not required unless the Tribunal determines that the written record is insufficient. 31 C.F.R. §285.11(f)(3)(i). Here, the issues in dispute can be resolved by a review of the documentary evidence. *Id.* Accordingly, the Tribunal will deny Petitioner's request for an oral hearing.

A showing of financial hardship does not invalidate a debt or release a debtor from a legal obligation to repay it. See *In re Hongmei Zhang*, HUDOHA No. 23-AF-0163-AG-093 (Dec. 3, 2024). However, if financial hardship is found, this Tribunal may downwardly adjust the garnishment amount to reflect the debtor's financial condition. 31 C.F.R. § 285.11(k)(3). To prove financial hardship, a petitioner must submit particularized evidence, including proofs of payment, showing that petitioner will be unable to pay essential subsistence costs such as food, medical care, housing, clothing, or transportation. See *In re Ivan Gregg*, HUDOHA No. 24-AF-0047-AG-037 (Jan. 8, 2025).

In support of his financial hardship claim, Petitioner submitted two of his biweekly pay statements and one of his spouse's pay statements. The evidence reflects that Petitioner and his spouse's monthly disposable income combined is approximately \$4,269.63.¹

To prove his essential expenses, Petitioner submitted a Consumer Debtor Financial Statement claiming three dependents and various monthly expenses. Petitioner submitted bills or other documentation substantiating his claimed monthly expenses of \$1,778.99 (rent/mortgage), \$1,184.99 (car payments), \$348.11 (electricity), \$245.58 (vehicle insurance), \$369.97 (cell phones), and \$143.67 (internet).

In addition, Petitioner claims monthly expenses of \$400 (gasoline/auto repairs), \$1,000 (food), \$200 (out-of-pocket medical expenses), \$200 (clothing), and \$40.00 (trash). These expenses were not supported with particularized evidence, such as bill or receipts. However, credit may be given for certain essential subsistence expenses, despite insufficient documentation, when the financial information is found to be generally credible. See *In re Derrick Byrd*, HUDOHA No. 23-AM-0001-AG-001 (Sep. 30, 2024); *In re Jannette M. Bush*, HUDOHA No. 22-AM-0158-AG-106 (Aug. 30, 2024); *In re Amber Young*, HUDOHA No. 23-AM-0024-AG-014 (July 16, 2024).² Based on the record, the claimed expenses discussed in this paragraph are found to be generally credible.

¹ Petitioner represents that he and his spouse share responsibility for paying their essential expenses. Accordingly, the Tribunal will consider his spouse's expenses and income in its review.

² See also *In re Dana Bynum*, HUDOHA No. 22-AM-0061-AG-044 (Nov. 21, 2023); *In re Jamie Frampton*, HUDOHA No. 22-AM-0146-AG-098 (Sep. 25, 2024); *In re Nicole Spencer*, HUDOHA No. 22-AM-0132-AG-090 (Nov. 15, 2023); *In re Ronnie E. Chavis*, HUDOHA No. 19-AM-0213-AG-066 (July 24, 2020); *In re Nikolas C. Murdock*, HUDOHA No. 15-VH-0029-AG-011 (June 22, 2016); *In re Misty Whitaker*, HUDOHA No. 14-VH-0128-AG-050 (Apr. 17, 2015); *In re Leslie H. Wilson*, HUDOHA No. 14-VH-0116-AG-049 (Mar. 25, 2015); *In re Lisa Mims*, HUDOHA No. 14-AM-0027-AG-012 (July 16, 2014); *In re Melvia Ramirez*, HUDOHA No. 13-VH-0139-AG-061 (Dec. 31, 2013); *In re Michelle Edwards*, HUDOHA No. 12-M-CH-AWG23 (Apr. 12, 2012); *In re Lydia Starr*, HUDOHA No. 11-M-CH-AWG138 (Mar. 21, 2012); *In re Carolyn Reed*, HUDOHA No. 12-M-CH-AWG05 (Jan. 20, 2012); *In re Melissa A. Lamantia*, HUDOHA No. 11-M-CH-AWG12 (Feb. 16, 2011); *In re Patricia Boyett*, HUDOHA No. 11-M-CH-AWG63 (May 25, 2011); *In re Hector Jimenez*, HUDOHA No. 10-M-CH-AWG81 (Oct. 20, 2010); *In re David Herring*, HUDOHA No. 07-H-NY-AWG53 (July 28, 2008); *In re Elva and Gilbert Loera*, HUDOHA No. 03-A-CH-AWG28 (July 30, 2004).

Petitioner's monthly household essential expenses, totaling approximately \$5,911.31, exceed Petitioner's monthly household disposable income, totaling approximately \$4,269.63. Therefore, the Secretary's proposed garnishment would cause Petitioner financial hardship.

Pursuant to 31 C.F.R. § 285.11(k)(3), the Tribunal has the authority to order garnishment at a lesser rate based upon the record before it. While the Secretary has successfully established that the subject debt is legally enforceable against Petitioner in the amount claimed, Petitioner has met his burden of proof in support of his claim of financial hardship. Therefore, the Tribunal finds that a garnishment amount at any percentage of Petitioner's disposable income would, at this time, constitute financial hardship.

ORDER

Based on the foregoing, Petitioner's request for an oral hearing is **DENIED**. Sufficient evidence has been presented to justify suspension of collection via administrative wage garnishment against Petitioner at this time.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain in place without prejudice to the Secretary's right to seek recovery of the subject debt by means of administrative wage garnishment should, in the future, Petitioner's disposable income increase, or Petitioner's essential household expenses for necessities be substantially reduced. Therefore, it is hereby **ORDERED** that the Secretary shall not, at this time, seek further collection of this outstanding obligation by means of administrative wage garnishment due to Petitioner's current financial circumstances.

**SO ORDERED,
ALEXANDER
FERNANDEZ-
PONS**

Alexander Fernández-Pons
Administrative Law Judge

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government OU =
Department of Housing and Urban
Development, Office of the Secretary
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Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. §§ 701 et seq.).