

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

In the Matter of:

DEBORAH KUKOYI,

Petitioner.

24-VH-0014-AG-010
(Claim No. 721017606)

November 6, 2024

DECISION AND ORDER

Deborah Kukoyi (“Petitioner”) filed a *Hearing Request* seeking a hearing concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the United States 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 owed to the United States government.

The Secretary of HUD has designated the judges of this Office of Hearings and Appeals (“Tribunal”) 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 in 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

FINDINGS OF FACT

Petitioner executed a Partial Claims Promissory Note (“Note”), dated August 26, 2016, in favor of HUD in the principal amount of \$75,139.46. In exchange for the Note, HUD advanced funds to Petitioner’s Federal Housing Administration (“FHA”) insured mortgage lender as a means of providing foreclosure relief to Petitioner.

Section 3(A) of the Note cites events that make the debt become due. The Note becomes due when the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary. On or about February 24, 2020, the Note became due when the FHA Insurance on Petitioner’s primary mortgage was terminated, as the lender indicated that the mortgage was paid in full.

On March 4, 2022, HUD received a payment from Petitioner in the amount of \$11,133.00 via the U.S. Department of Treasury Offset Program. The Secretary alleges that Petitioner remains indebted to HUD in the following amounts:

- i. \$69,415.84 as the unpaid principal balance as of November 30, 2023;
- ii. \$1,214.22 as the unpaid interest on the principal balance at 1% per annum through November 30, 2023;

- iii. \$8,823.14 as the unpaid penalties and administrative costs as of November 30, 2023; and
- iv. interest on said principal balance from December 1, 2023, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated October 5, 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. Petitioner has not entered into a written repayment agreement with HUD.

APPLICABLE LAW

The agency bears the initial burden of proof to show the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). A petitioner, thereafter, may show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii).

A petitioner may also present evidence that the terms of the proposed repayment schedule would cause financial hardship to the petitioner. Id. To determine if garnishment will cause financial hardship, a petitioner’s essential expenses are considered against the petitioner’s disposable income. Tiffany Weber, HUDOA No. 22-VH-0024-AG-020 at 3 (Apr. 19, 2023). A showing of financial hardship does not invalidate a debt or release a debtor from a legal obligation to repay it. Ronnie E. Chavis, HUDOA No. 19-AM-0213-AG-066 at 3 (July 24, 2020). However, if financial hardship is found, this Tribunal may downwardly adjust the garnishment amount to reflect a petitioner’s financial condition. 31 C.F.R. § 285.11(k)(3).

DISCUSSION

As evidence of Petitioner’s indebtedness, the Secretary filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable* (“*Secretary’s Statement*”). Attached as exhibits to the *Secretary’s Statement* are a copy of the Note and the Declaration of Gary Sautter, Acting Director of the Asset Recovery Division in HUD’s Financial Operations Center. The *Secretary’s Statement* proposes a monthly wage garnishment repayment schedule of 15% of Petitioner’s disposable income.

Petitioner does not contest the existence of the debt or that the remaining debt is past due. Rather, Petitioner counters that the proposed repayment schedule will cause her financial hardship. For Petitioner to show financial hardship she “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.” Thalia Kelly, HUDOA No. 17-VH-0161-AG-043 at 2 (Nov. 16, 2018).

In support of her financial hardship claim, Petitioner submits one of her biweekly pay statements and one of her spouse’s biweekly pay statements. Based on these submissions, Petitioner’s monthly disposable pay is approximately \$3,201.47. And Petitioner’s spouse’s

monthly disposable pay is approximately \$2,536.11. The evidence reflects that Petitioner and her spouse's monthly disposable pay combined is approximately \$5,737.58.¹

To prove her essential expenses, Petitioner submitted a Consumer Debtor Financial Statement claiming one dependent and monthly essential expenses of: \$1,100.00 (rent/mortgage), \$500.00 (car payment), \$150.00 (gasoline and auto repairs), \$150.00 (electricity), \$500.00 (food), \$50.00 (cable), \$200.00 (medical), \$50.00 (clothing), \$20.00 (trash), \$260.00 (insurance), \$525.00 (personal loan), \$150.00 (phone bills), and \$100.00 (water).

Petitioner's alleged cable expense will not be considered essential because Petitioner has not provided particularized evidence, such as bills or receipts, to prove this expense and has not explained how it is essential to Petitioner's household. See Thalia Kelly, HUDOA No. 17-VH-0161-AG-043 at 3 (Nov. 16, 2018). The Tribunal will also exclude Petitioner's personal loan from its review because Petitioner provides no particularized evidence that this debt was incurred for essential expenses. Steven Davis, HUDOA No. 20-VH-0045-AG-024 at 5 (Sep. 1, 2021) ("[W]ithout an evidentiary showing that these debts were incurred for the purchase of necessities, credit will not be given to Petitioner for those obligations.").

Petitioner's remaining monthly expenses for rent/mortgage, car payment, gasoline, auto repairs, electricity, food, medical, clothing, trash, insurance, phone bills, and water are not supported by particularized evidence. Even if the Tribunal considered the expenses discussed in this paragraph in a financial hardship analysis, Petitioner has not established financial hardship because Petitioner's monthly household income exceeds these claimed expenses by more than \$2,000.00. Therefore, Petitioner has failed to prove that the Secretary's proposed garnishment repayment schedule of 15%, or approximately \$480.22 per month, would cause Petitioner financial hardship. Accordingly, the Tribunal finds that the Secretary is authorized to garnish up to 15% of Petitioner's disposable pay.

Should Petitioner wish to negotiate repayment terms with HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.² Petitioner is entitled to seek reassessment of the repayment schedule in the future if she experiences materially changed financial circumstances. 31 C.F.R. § 285.11(k).

ORDER

For the reasons set forth above, the Tribunal finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

ORDERED that the Secretary is authorized to seek administrative wage garnishment from Petitioner in the amount of 15% of Petitioner's disposable income as determined in this


¹ Petitioner represents that she and her spouse share responsibility for paying their essential expenses. Accordingly, the Tribunal will consider her spouse's expenses and income in its review. However, HUD is not authorized by this *Decision and Order* to garnish Petitioner's spouse's income.

² The U.S. Department of the Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting HUD Counsel assigned to this matter.

Decision and Order, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month. It is:

FURTHER ORDERED that the *Notice of Docketing, Order, and Stay of Referral* imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

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.*).