

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

In the Matter of:

Lisa McDermott-Harris,

Petitioner.

24-VH-0024-AG-017

780824600

June 25, 2024

DECISION AND ORDER

On November 8, 2023, Lisa McDermott-Harris (“Petitioner”) filed a *Request for Hearing* (“*Hearing Request*”) concerning a proposed administrative wage garnishment relating to 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.

JURISDICTION

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment pursuant to 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Thereafter, Petitioner must 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). In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. Id.

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285(f)(4), on November 13, 2023, this Court stayed the issuance of a wage garnishment order until this final written decision was issued. On December 20, 2023, the Secretary filed her *Statement* along with documentation in support of her position. On March 25, 2024, in response to the Court’s *Show Cause Order*, the Petitioner filed documentary evidence in support of her position. This case is now ripe for review.

FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code § 3720D because of a defaulted loan that was insured against non-payment by the Secretary.

According to the *Secretary's Statement*, Petitioner executed a Note in the principal amount of \$16,868 on June 24, 2015. The Note was insured against default by the Secretary pursuant to Title I of the National Housing Act. Petitioner defaulted after failing to make payments, and the Note was subsequently assigned to HUD. Pursuant to the terms of the Note, which stated that the Note Holder may require the Borrower to immediately pay the full unpaid balance in the event of default, Petitioner's debt to HUD became due and payable.

The Secretary claimed that Petitioner failed to make payment on the Note at the place and in the amount specified. Consequently, Petitioner's debt to HUD is delinquent. Petitioner is justly indebted to the Secretary in the following amounts.

- (a) \$11,716.20 as the unpaid principal balance as of November 9, 2023;
- (b) \$331.16 as the unpaid interest on the principal balance at 1% per annum through November 9, 2023;
- (c) \$239.78 as the unpaid penalties and administrative fees as of November 9, 2023; and
- (d) interest on said principal balance from November 10, 2023, at 1% per annum until paid.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated October 4, 2023, was sent to Petitioner's last known address. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD. However, to date, Petitioner has not entered into any such agreement.

Petitioner provided a copy of her biweekly pay statement ending on November 11, 2023. Based on the statement, the Secretary determined that Petitioner's biweekly disposable pay equals \$1,992.96, and proposes a wage garnishment at 15% of Petitioner's disposable pay or \$298.94 biweekly.

Based on the foregoing, the Secretary requests a finding that Petitioner's debt is past due and legally enforceable, and that the repayment schedule be authorized as requested.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, the Petitioner claims that the proposed garnishment amount would create a financial hardship.

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner bears the burden of showing by a preponderance of the evidence that the proposed wage garnishment would create a financial hardship. To make a showing of financial hardship, Petitioner must "submit 'particularized evidence,' including proofs of payment, showing that [s]he will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation." Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985). Here, in support of her claim, Petitioner offers into

evidence a copy of a Debt Resolution Financial Statement which is a self-report form in which Petitioner outlines all monthly expenses, current assets, and miscellaneous debts. According to the record, no further evidence was presented by the Petitioner beyond this Financial Statement.

In debt collection cases involving garnishment, if the Petitioner fails to meet the burden of proof for hardship, 31 C.F.R. § 285.11(c) authorizes the Secretary to garnish up to 15% of Petitioner's disposable income. The disposable income is "that part of the debtor's compensation ... from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes"

Here, the Petitioner's pay statement indicates a gross pay for the biweekly pay period totaling \$2,536.58 which in turn yields a monthly gross income of \$5073.16. After allowable deductions for social security, federal and state taxes, and other deductions permitted by law, Petitioner's biweekly disposable income of \$1,992.96 yields a monthly disposable income of \$3985.92. If the Secretary imposes garnishment after deductions in this case, 15% of Petitioner's monthly disposable income will result in a garnishment payment of \$597.88 monthly. Once the proposed garnishment amount is deducted, the Petitioner's monthly disposable income will be \$3388.04.

In this case the only evidence offered by the Petitioner was a Debt Resolution Financial Statement. According to the Petitioner's Financial Statement, her monthly household expenses included mortgage, \$1,512.00; food, \$800.00; electricity, \$200.00; gas, \$200.00; telephone, \$60.00; and other miscellaneous expenses, \$220.00 that, together, total \$2792.00. While Petitioner considers the Financial Statement as evidence that sufficiently supports her claim of financial hardship, it is not. A Financial Statement, standing alone, is insufficient as proof of hardship because, without proof of payments or other additional evidence to further substantiate such claims, the Financial Statement lacks credibility. This Court has long held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is ... unenforceable." Michael Bridges, HUDOA No. 21-VH-0092-AG-053 (October 28, 2022) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). So, in the absence of additional evidence, the Court must find that Petitioner's claim of hardship fails for lack of sufficient proof.

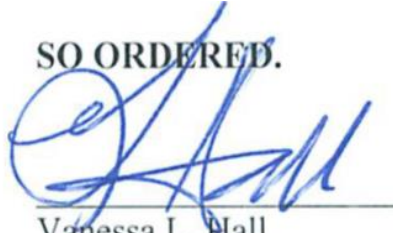
ORDER

Based on the foregoing, Petitioner remains obligated to pay the subject debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury for an administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 15% of Petitioner's biweekly disposable income.

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.*).