

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

In the Matter of:

JEANNETTE TERRY,

Petitioner.

24-VH-0053-AG-042  
(Claim No. 721020919)

November 18, 2024

**DECISION AND ORDER**

On December 4, 2023, Jeannette Terry (“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.

**JURISDICTION**

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.

**APPLICABLE LAW**

The agency 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, a petitioner may show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. *Id.* § 285.11(f)(8)(ii). In addition, a petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to the 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. § 285.11(f)(4), on December 6, 2023, this Tribunal issued a *Notice of Docketing, Order and Stay of Referral* staying the issuance of a wage withholding order until the issuance of this *Decision and Order*. On January 18, 2024, HUD filed the *Secretary’s*

*Statement that Petitioner's Debt is Past Due and Legally Enforceable.* Petitioner then filed additional documentary evidence in support of her position. This case is now ripe for review.

### **FINDINGS OF FACT**

Petitioner executed a Partial Claims Promissory Note ("Note"), dated March 19, 2014, in favor of HUD in the principal amount of \$36,714.05. 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 March 31, 2022, 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. Once the Note became due, Petitioner was to make payment on the Note to HUD.

Petitioner failed to make payment on the Note. Consequently, Petitioner's debt to HUD is delinquent. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Accordingly, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$36,714.05 as the unpaid principal balance as of December 30, 2023;
- ii. \$275.22 as the unpaid interest on the principal balance at 1% per annum through December 30, 2023;
- iii. \$929.77 as the unpaid penalties and administrative costs as of December 30, 2023; and
- iv. interest on said principal balance from December 31, 2023, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated September 21, 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.

HUD was unable to obtain a recent pay statement from Petitioner to calculate a repayment schedule based on Petitioner's actual income. HUD's proposed repayment schedule is \$282.16 per pay period,<sup>1</sup> or an amount equal to 15% of Petitioner's disposable pay. The Secretary requests that this Tribunal find Petitioner's debt past due and legally enforceable and the Secretary's proposed repayment schedule fair.

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<sup>1</sup> Pursuant to a Wage Garnishment Order that was issued to Petitioner's employer on October 25, 2023, Petitioner's wages were garnished on December 21, 2023, in the amount of \$282.16.

## **DISCUSSION**

Petitioner does not dispute the amount of the debt, the existence of the debt, or that the debt is past due. Rather, Petitioner claims that she does not owe the debt because 2044 Properties LLC, the entity that purchased the underlying property from Petitioner in October 2020 and sold it to a third party in March 2022, has taken full responsibility for the debt. As support, Petitioner offers as evidence email communications indicating that 2044 Properties LLC intends to handle the subject debt going forward.

“A third party’s statement is insufficient as proof that the subject debt was paid,” especially when the third party is not a party to the Note. See Anna Bolton, HUDOHA No. 23-VH-0146-AG-077, September 13, 2024; see also Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 12, 2012) (the court found that a statement to Petitioner by a title company that “all was okay, and Petitioner did not owe debt” was insufficient as proof that HUD had been paid). The Secretary’s right to collect the subject debt in this case emanates from the terms of the Note that is between Petitioner and HUD and not based on email communications between Petitioner and the third party in this case, 2044 Properties LLC. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing directly from HUD that explicitly relieves Petitioner’s obligation to HUD under the Note, “or valuable consideration accepted by the lender” indicating intent to release. See, e.g., Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); John Tipton, HUDBCA No. 23-VH-0153-AO-083 (Sep. 12, 2024). To date, Petitioner has failed to offer proof of a written release or proof of exchange of valuable consideration. As a result, the Tribunal finds that Petitioner remains obligated to pay the subject debt in the amount so claimed by the Secretary.<sup>2</sup>

## **ORDER**

Based on the foregoing, 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 hereby

**ORDERED** that the Secretary is authorized to seek 15% of Petitioner’s disposable pay by administrative wage garnishment in satisfaction of the debt due. It is

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

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<sup>2</sup> In the absence of a claim of financial hardship from Petitioner, this Tribunal accepts the Secretary’s proposed repayment schedule of 15% of her disposable pay per pay period. Petitioner is entitled to seek reassessment of this repayment schedule in the future if she experiences materially changed financial circumstances. 31 C.F.R. § 285.11(k). Furthermore, nothing in this *Decision and Order* precludes Petitioner from independently seeking reimbursement from a third party.

SO ORDERED.



Vanessa L. Hall  
Administrative Judge

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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.*).