

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

In the Matter of:

MORGAN WINTERS,

Petitioner.

Docket No. 24-VH-0192-AG-128  
(Claim No. 721015623)

February 14, 2025

**DECISION AND ORDER**

On March 20, 2024, Morgan Winters (“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”). 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, that the repayment schedule 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**

Petitioner first requested a hearing regarding the subject debt on June 10, 2020. On April 6, 2023, the Tribunal issued a *Decision and Order* finding Petitioner liable for the debt and noting that Petitioner had filed no documentary evidence to prove that the repayment schedule would cause her undue financial hardship.

Petitioner again requested a hearing on March 20, 2024 arguing that the repayment schedule would cause her financial hardship. Petitioner's *Hearing Request*, dated March 20, 2024, included documentary evidence in support of her financial hardship argument. On March 21, 2024, this Tribunal issued a *Notice of Docketing, Order, and Stay of Referral* ("Notice of Docketing") staying the issuance of a wage withholding order until the issuance of this *Decision and Order*. On April 16, 2024, HUD filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* as evidence of Petitioner's indebtedness. Petitioner did not provide evidence in response to the *Notice of Docketing*. This case is now ripe for review.

### **FINDINGS OF FACT**

Petitioner executed and delivered a Promissory Note ("Note"), dated November 7, 2017, in favor of HUD in the principal amount of \$50,751.55. The funds secured by the Note were paid by HUD to Petitioner's primary mortgage lender to bring Petitioner's mortgage current and provide foreclosure relief to Petitioner.

The terms of the Note included Petitioner's promise to pay, secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on the Note. The Note required payment on January 1, 2048, or, if earlier, 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.

On or about March 29, 2019, 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. And HUD alleges that Petitioner is indebted to it in the following amounts:

- i. \$50,751.55 as the unpaid principal balance as of February 28, 2024;
- ii. \$2,325.40 as the unpaid interest on the principal balance at 1.0% per annum through February 28, 2024;
- iii. \$14,677.12 as unpaid penalties and administrative costs as of February 28, 2024; and
- iv. interest on said principal balance from February 29, 2024, at 1.0% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated January 16, 2024, 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 proposes a biweekly wage garnishment repayment schedule of \$201.98. The Secretary requests that this Tribunal find Petitioner's debt past due and legally enforceable and the Secretary's proposed repayment schedule fair.

### **DISCUSSION**

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." *In re Thalia Kelly*, HUDOHA No. 17-VH-0161-AG-043 at 2 (Nov. 16, 2018).

In support of her financial hardship claim, Petitioner submits two of her biweekly pay statements and three of her spouse's biweekly pay statements. The evidence reflects that Petitioner and her spouse's monthly disposable pay combined is approximately \$5,072.99.<sup>1</sup>

To prove her essential expenses, Petitioner submitted a Financial Disclosure Statement claiming five dependents including herself and monthly essential expenses of: \$1,150 (rent/mortgage), \$14.84 (home/renter insurance), \$600.00 (food), \$75.39 (electric), \$114.99 (gas), \$242.61 (water/sewer), \$245.18 (cell phone), \$361.35 (car payment), \$200.00 (gas and oil), and \$194.47 (car insurance).

Petitioner provided particularized evidence to support her claimed expenses of \$1,150 (rent/mortgage), \$14.84 (home/renter insurance), \$75.39 (electric), \$114.99 (gas), \$133.15 (water/sewer), \$245.18 (cell phone), \$361.35 (car payment), and \$194.47 (car insurance). Even if the Tribunal considered all the expenses claimed by Petitioner, Petitioner has not established financial hardship because her monthly household income exceeds the claimed expenses by more than \$1,000.00. Therefore, Petitioner has failed to prove that the Secretary's proposed garnishment repayment schedule of 15% 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.<sup>2</sup> 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).

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<sup>1</sup> 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.

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

## **ORDER**

Based on the foregoing, the Tribunal finds the subject debt to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

**ORDERED** that the Secretary is authorized to seek up to 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* imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

**SO ORDERED.**

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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.*).