

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

In the Matter of:

**MARIA C. McLAURIN,**

Petitioner

HUDOA No. 12-M-CH-AG91

Claim No. 780262009OB

Date of Order: November 1, 2012

**DECISION AND ORDER**

On May 9, 2012, Petitioner Maria McLaurin ("Petitioner") requested a hearing 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 Government"). 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 federal government.

The Secretary of HUD has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.170. HUD has not yet issued a wage garnishment order to Petitioner's employer. Accordingly, pursuant to 31 C.F.R. § 285.11(f)(10)(ii), the issuance of such an order is stayed until the issuance of this written decision. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), issued May 9, 2012.)

**Background**

On May 11, 1995, Petitioner executed a Note in the amount of \$25,000.00 with Pacific Empire Mortgage Corp. ("Pacific"). (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed May 17, 2012; Secretary's Supplemental Statement ("Sec'y Supp. Stat."), filed October 18, 2012; Ex. 1, Note.) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat., ¶ 1.) Pacific then transferred the Note to Citizens Thrift and Loan Association ("Citizens"). (Sec'y Supp. Stat., Ex. 1, p. 3.)

Petitioner failed to make payment on the Note, and it was assigned to HUD on July 19, 2000 under the regulations governing the Title I Insurance Program. (Sec'y Stat., ¶ 2; Ex. 2, Declaration of Kathleen Porter<sup>1</sup>, ¶ 3; Sec'y Supp. Stat., Ex. 1, p. 2.)

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<sup>1</sup> Kathleen Porter is the Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

HUD's attempts to collect the alleged debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 3; Porter Decl., ¶ 4.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$20,570.29 as the unpaid principal balance as of April 30, 2012;
- b) \$7,961.06 as the unpaid interest on the principal balance at 5.0% per annum through April 30, 2012;
- c) interest on said principal balance from May 1, 2012, at 5.0% per annum until paid.

(Porter Decl. ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Garnishment Notice"), dated April 4, 2012, was sent to Petitioner, in accordance with 31 C.F.R. 285.11(e). (Sec'y Stat., ¶ 5.) The Garnishment Notice afforded Petitioner the opportunity to enter into a written repayment agreement, as required by 31 C.F.R. 285.11(e)(2)(ii). (*Id.* at ¶ 6.) To date, Petitioner has not entered into such an agreement. (*Id.*)

The Secretary proposes a repayment schedule of \$417.00 per pay period, which constitutes 15% of Petitioner's disposable monthly income. (*Id.* at ¶ 7.)

### **Discussion**

The Secretary has the initial burden of proving the existence and amount of the alleged debt. 31 C.F.R. 285.11(f)(8)(i). Petitioner, thereafter, must show, by a preponderance of the evidence, that the debt does not exist or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). Additionally, the Petitioner may present evidence that the terms of the 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.*)

As evidence of the existence and amount of the debt here, the Secretary has filed a statement supported by documentary evidence, including a copy of the Note and the sworn testimony of the Acting Director of HUD's Asset Recovery Division. (*See* Sec'y Supp. Stat; Ex. 1; Sec'y Stat.; Ex. 2). I find that the Secretary has therefore met his burden.

Petitioner does not dispute the existence or amount of the alleged debt. Rather, she claims financial hardship, stating: "I currently do not have the ability to re-pay this debt and especially not this payment amount." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), p. 1.)

The Notice of Docketing ordered Petitioner to file, "on or before June 26, 2012," any documentary evidence that the terms of the repayment schedule would cause a financial hardship. Notice of Docketing, 2 (emphasis in original). Petitioner did not file any information by that date. As a result, the Court issued an Order on July 18 instructing Petitioner to file her evidence "on or before July 31, 2012." Order for Documentary Evidence ("July Order"), issued July 18, 2012 (emphasis in original). The July Order informed Petitioner that her evidence of

financial hardship “MUST include receipts, checks, or other proof of payment of necessary household expenses,” and listed other important forms of evidence (Id.) (emphases in original). Petitioner did not respond to the July Order.

Subsequently, the Court issued another Order requiring Petitioner file her documentary evidence. (Order for Documentary Evidence (“August Order”), issued August 20, 2012.) This Order warned Petitioner that:

“Failure to comply ... may result in the imposition of sanctions to include entry of judgment in favor of the opposing party or other appropriate sanctions.”

August Order, p.1. (emphasis in original).

Petitioner did not respond to the August Order. In all, Petitioner has ignored three separate orders to file evidence supporting her claim of financial hardship. Without this evidence, her claim is nothing more than an assertion. This Court has consistently maintained that assertions without evidence are insufficient to meet Petitioner’s burden of proof. Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Accordingly, I find that Petitioner’s debt in this case is past due and legally enforceable in the amount claimed by the Secretary.

### **ORDER**

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for 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 to the extent authorized by law.



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H. Alexander Manuel  
Administrative Judge