

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

In the Matter of:

Frances Cheaves,

Petitioner.

HUDOA No. 12-VH-CH-AG-128

Claim No. 771022909

December 19, 2012

**DECISION AND ORDER**

On September 11, 2012, Petitioner requested a hearing concerning proposed administrative wage garnishment in relation to a debt allegedly owed to the U.S. 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.

**APPLICABLE LAW**

The administrative judges of this Court are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if such action is contested by a debtor. This hearing is conducted in accordance with the procedures set forth at 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 both the existence as well as the amount of the alleged debt. 31 C.F.R. 285.11(f)(8)(ii). In addition, 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.*)

**Procedural Background**

On September 13, 2012, the Court stayed the issuance of a wage withholding order until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral, "Notice of Docketing," dated September 13, 2012.) In response to the Notice of Docketing, the Secretary's Statement was filed on September 20, 2012. Petitioner's Short Petition was filed thereafter on November 8, 2012. This case is now ripe for review.

**Findings of Fact**

On July 31, 1995, Petitioner executed a Note ("Note") under the Title I insurance program which was assigned to HUD upon her default. (Secretary's Statement ("Sec'y Stat.") ¶¶ 1-2, dated September 20, 2012; Exh.1, "Note"; Exh.2, Declaration of Kathleen Porter, Director, Asset Recovery Division, Financial Operations Center of HUD ("Porter Decl.") ¶ 3, dated

September 19, 2012.) HUD has attempted to collect his debt but has been unsuccessful. (Sec'y Stat. ¶ 3; Porter Decl. ¶4.) HUD thereby alleges that the Petitioner is indebted to HUD in the following amounts:

- a) \$9,821.74 as the unpaid principal balance as of September 11, 2012;
- b) \$2,270.72 as the unpaid interest on the principal accruing at a rate of 1% per annum through September 11, 2012; and
- c) Interest on said principal balance from September 12, 2012 accruing at a rate of 5% per annum until the debt is paid in full.

(Sec'y Stat. ¶ 4; Porter Decl. ¶ 4.)

A Notice of Intent to Initiate Administrative Wage Garnishment, dated January 3, 2012 was mailed to Petitioner in accordance with 31 C.F.R. 285.11(e). (Sec'y Stat. ¶ 5; Porter Decl. ¶ 5.) Petitioner was allowed the opportunity to enter into a written repayment agreement as is required by 31 C.F.R. 285.11 (e)(2)(ii) but Petitioner has not to this date entered into such an agreement. (Sec'y Stat. ¶ 6; Porter Decl. ¶ 6.)

The Secretary proposes a repayment schedule of \$219.98 on a bi-weekly basis or 15 percent of the Petitioner's disposable income as allowed by 31 C.F.R. 285.11(i)(2)(A). (Sec'y Stat. ¶ 11; Porter Decl. ¶ 10.)

### Discussion

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may “present by a preponderance of the evidence that all or part of the alleged debt is unenforceable or not past due; or that the terms of the proposed garnishment amount would cause financial hardship.” In this case, Petitioner initially requested to “settle this obligation.” (Petitioner’s Hearing Request, “Pet’r’s Hr’g. Req.,” filed September 11, 2012.) But, thereafter Petitioner requested that the proposed garnishment amount be lowered because it would create a financial hardship for her. (Petitioner’s Short Petition, “Petitioner,” filed November 4, 2012).

First, Petitioner requests of the Court that she wishes to settle the debt that is the subject of this proceeding. The Secretary states, on the other hand, that “while Petitioner has expressed an interest in settling this matter, she has, to date, been unresponsive to the Secretary’s Representative’s efforts to contact her.” (Sec’y. Stat., ¶ 10; Ex. 2, Declaration of Kathleen Porter, ¶ 9.) While Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a

review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

Next, Petitioner requests a “lower garnishment payment of \$400.00 a month due to financial hardship.” (Petition, p.1.) As support, Petitioner provided the Court with a financial statement in which she claimed her monthly net income to be \$2827.43, but, Petitioner did not provide the necessary pay statement or pay stub to substantiate her claim, despite being extended the opportunity to provide such documentary evidence. (See Notice of Docketing; Order for Documentary Evidence, dated October 11, 2012.) In addition, Petitioner failed to provide the Court with the necessary proof of payment of expenses for essential expenses she had incurred on a monthly basis. As such, without any evidence being made a part of the record, Petitioner’s claims will be treated by the Court as mere allegations. This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Based upon the evidence presented by Petitioner, I find that her claim fails for want of proof.

### **ORDER**

Based upon the foregoing, 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.

/s/ original signature  
Vanessa L. Hall  
Administrative Judge