

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

In the Matter of:

**DeAngela Chapman,**

Petitioner.

HUDOHA 13-VH-0141-AG-063  
Claim No. 2012780770A

January 6, 2014

**DECISION AND ORDER**

On July 10, 2013, Petitioner requested a hearing concerning a 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 have been designated to adjudicate contested cases where the Secretary of the U.S. Housing and Urban Development seeks to collect an alleged debt by means of administrative wage garnishment. 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 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 the 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 July 10, 2013, this 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*”), p.2. On July 16, 2013, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to respond to any of the Orders issued by the Court. *Notice of Docketing; Order for Documentary Evidence*, dated September 3, 2013; *Order to Show Cause*, dated September 25, 2013. This case is now ripe for review.

### Background

On February 24, 2006, Petitioner executed and delivered a Retail Installment Contract-Security Agreement (Note) to Freedom Meridian in the amount of \$39,133.20, which was insured against non-payment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. *Secretary's Statement (Sec'y. Stat.)* ¶ 2, dated June 11, 2013; Exhibit A, Note. Contemporaneously, Freedom Meridian assigned the Note to Vanderbilt Mortgage and Finance, Inc. *Sec'y Stat.* ¶ 3. Petitioner failed to make payment on the Note as agreed. *Sec'y Stat.* ¶ 4. Consequently, in accordance with 24 C.F.R. § 201.54, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the United States of America. *Id.*, Exhibit B. The Secretary is the holder of the Note on behalf of the United States. *Id.*, Exhibit C, *Declaration of Gary Sautter (Sautter Decl.)*, ¶ 4.

The Secretary has made efforts to collect the subject debt from Petitioner, but has been unsuccessful. *Sec'y. Stat.* ¶ 5; Exhibit C, *Sautter Decl.* ¶ 4. Petitioner is indebted to the Secretary on the claim in the following amounts:

- (a) \$14,042.50 as the unpaid principal balance as of June 30, 2013;
- (b) \$46.80 as the unpaid interest on the principal balance at 1.0% per annum through June 30, 2013; and,
- (c) Interest on said principal balance from July 1, 2013 at 1% per annum until paid.

### Id.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment ("Notice") was mailed to Petitioner on May 7, 2011. *Sec'y Stat.* ¶ 6; Exhibit C, *Sautter Decl.* ¶ 7. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity, by letter dated May 7, 2013, to enter into a written repayment agreement under mutually agreeable terms. *Sec'y Stat.* ¶ 7; Exhibit C, *Sautter Decl.* ¶ 6. Petitioner did not enter into a repayment agreement or pay the debt in full based on the May 7, 2013 Notice. *Id.*

On June 7, 2013, the U.S. Department of Treasury issued a Wage Garnishment Order to Petitioner's employer. *Sec'y. Stat.*, ¶ 6; *Sautter Decl.*, ¶ 7. Based on the issuance of the Wage Garnishment Order, Petitioner's pay has been garnished once in the amount of \$164.85. *Sec'y. Stat.*, ¶ 9; *Sautter Decl.*, ¶ 9. However, this garnishment payment has not yet been remitted to HUD.

Therefore, based on the current garnishment, HUD's proposed repayment schedule is \$164.85 per pay period, or 15% of Petitioner's disposable pay. *Sec'y Stat.* ¶ 10; Exhibit C, *Sautter Decl.* ¶ 9.

### Discussion

Petitioner does not deny that the alleged debt is past due and legally enforceable. Instead, she disputes that the debt amount should not be collected by means of the proposed administrative wage garnishment. Petitioner states that, “I would like to pay the debt back on my own without being garnished.” *Petitioner’s Hearing Request, (Pet’r. Hr’g. Req.)*, filed July 10, 2013. Petitioner does not, however, provide a basis for her preference of paying the lender directly as opposed to collection of the debt by garnishment. She also has failed to provide documentary evidence that would sufficiently persuade the Court that payment of the alleged debt should not be collected by means of an administrative wage garnishment.

The Secretary contends, on the other hand, that the alleged debt is past due and legally enforceable, and that “the proposed repayment terms [are] fair.” *Sec’y. Stat.*, p. 3. As support, the Secretary produced a copy of the Note signed by Petitioner, along with a copy of a sworn declaration from the Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center who is responsible for monitoring information regarding collection of defaulted loans assigned to the Secretary of HUD under the Title I Insurance Program. *Sec’y. Stat.*, Exhibit C, *Sautter Decl.*, ¶ 2. The Secretary provided the monitoring director’s declaration to not only substantiate the current amount of the alleged debt owed by Petitioner, but also to provide documentation to show that Petitioner had previous opportunities to enter into a repayment agreement before a wage garnishment order was even considered. *Sec’y. Stat.*, Exhibit C, *Sautter Decl.* ¶ 4.

Since Petitioner has failed to provide any evidence to either rebut or refute the evidence presented by the Secretary, and also has failed to submit evidence in support of her position, the Court finds that Petitioner’s claim fails for lack of proof.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party.*

(Emphasis added.)

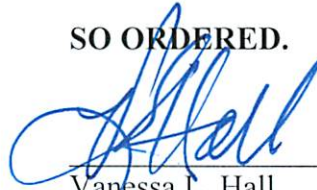
Accordingly, the Court finds that, pursuant to Rule 26.4(c), Petitioner’s non-compliance with the Orders issued by this Court provides a separate basis for rendering a decision against Petitioner.

### ORDER

Based on 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**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount equal to 15% of Petitioner's monthly disposable pay.

**SO ORDERED.**



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Vanessa L. Hall  
Administrative Judge

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**Review of determination by hearing officers.** A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.