

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

In the Matter of:

**MARGARET BOSAW,**

Petitioner.

HUDOHA 14-AM-0086-AG-037

Claim No. 780617335-OA

August 14, 2014

**DECISION AND ORDER**

On April 25, 2014, Margaret Bosaw (“Petitioner”) filed a Hearing Request, along with limited documentary evidence, concerning a proposed administrative wage garnishment for a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “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 U.S. government.

**Applicable Law**

The Secretary has designated the administrative judges of this Court to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. 24 C.F.R. § 17.81(b). 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. § 17.81. Pursuant to 31 C.F.R. § 285.11(f)(8)(i), the Secretary has the initial burden of proof to show the existence and amount of the alleged debt. Thereafter, Petitioner must prove 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 the 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 History**

Pursuant to 31 C.F.R. § 285.11(f)(4), on April 28, 2014, this Court ordered the suspension of the withholding order issued to Petitioner’s employer, with the suspension beginning on the 61st day after receipt of the Hearing Request and continuing until the issuance of this written decision. (Revised Notice of Docketing, Order, and Stay of Referral (“Revised Notice of Docketing”), 2.). The Revised Notice of Docketing also included an order to the Secretary and Petitioner to file their documentary evidence by May 27, 2014, and June 11, 2014, respectively.

On June 2, 2014, the Secretary filed his Secretary's Statement along with documentary evidence in support of his position. On June 6, 2014, Petitioner submitted additional documentary evidence. (Petitioner's Documentary Evidence ("Pet'r. Docs").) The record is now ripe for review.

### **Background**

On June 24, 2000, Petitioner and Steven P. Bosaw executed and delivered a Promissory Note ("Note") in the amount of \$9,478.35 to TMS Mortgage, Inc. d/b/a The Money Store. (Secretary's Statement ("Sec'y Stat."), ¶ 2, filed June 2, 2014; Ex. 1, Note.) The Note was insured against nonpayment by the Secretary pursuant to Title 1 of the National Housing Act. (Sec'y Stat. ¶ 3; Ex. 2, Declaration of Kathleen M. Porter<sup>1</sup> ("Porter Decl.") ¶ 3.)

Petitioner failed to make payments as agreed in the Note, and the Note was assigned to HUD by Wells Fargo Bank Minnesota, pursuant to the requirements on the Title I Insurance Program.<sup>2</sup> (Sec'y Stat. ¶ 4, Ex. 2, Porter Decl., ¶ 3.)

HUD states that it has attempted to collect the amount due under the Note, but has been unsuccessful. (Sec'y Stat. ¶ 5, Ex. 2, Porter Decl., ¶ 4.) As a result, HUD contends that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$9,059.44 as the unpaid principal balance as of April, 30, 2014;
- (b) \$882.96 as the unpaid interest on the principal balance at 1% per annum through April 30, 2014;
- (c) interest on said principal balance from May 1, 2014, at 1% per annum until paid; and
- (d) \$6,738.21 as the unpaid penalties and administrative costs as of April 30, 2014.

(Sec'y Stat., ¶ 6; Ex. 2, Porter Decl. ¶ 4.)

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated March 25, 2014, was sent to Petitioner. (Sec'y Stat., ¶ 7; Ex. 2, Porter Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. (Sec'y Stat., ¶ 11.) However, Petitioner has elected not to do so. (Sec'y Stat., ¶ 11; Ex. 2, Porter Decl. ¶ 6.) Petitioner provided HUD with a copy of her pay statement for the two-week period ending April 20, 2014. (Sec'y Stat., ¶ 12; Ex. 2, Porter Decl. ¶ 7.) Based upon this pay statement, the Secretary proposes a repayment schedule of \$85.45 bi-weekly, or an amount equivalent to 15% of Petitioner's disposable income. (Sec'y Stat., ¶ 14; Ex. 2, Porter Decl. ¶ 7.)

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

<sup>2</sup> Wells Fargo Bank of Minnesota was the lawful holder of the note pursuant to an assignment dated January 20, 2004. Ex. 1, Note.

### Discussion

Petitioner contends that the alleged debt is unenforceable against her because the subject property and its debts and obligations were awarded to her ex-husband as part of their divorce. As support, Petitioner provided a copy of the Quit Claim Deed. (Hearing Request, Attachment.) Petitioner also contends that she does not earn enough money to satisfy the Secretary's proposed repayment schedule of \$85.45 bi-weekly. Petitioner asserts, "I do not make enough money to support a garnishment of that magnitude." (Hearing Request, p. 1; Pet'r's. Docs.) As support, Petitioner provided a copy of her earnings statement and a copy of a Uniform Order For Support issued by the Circuit Court of the Seventh Judicial Circuit, Jersey County, Illinois.

The Secretary states that reliance upon the terms of the Quit Claim Deed releasing Petitioner from ownership of the property securing the debt in this case, is not a defense to this action. (Sec'y Stat., ¶ 9.) The Secretary asserts that "both Petitioner and Petitioner's former spouse are jointly and severally liable for the loan." *Id.* Moreover, The Secretary states "The divorce decree only determined the rights and liabilities between Petitioner and his former spouse, not third parties." (Sec'y Stat., ¶ 10.) The Secretary also claims that Petitioner has not demonstrated that a garnishment of \$85.45 per pay period or the equivalent of 15% of her disposable income would create financial hardship. (Sec'y Stat., ¶ 14.)

As to Petitioner's first claim that liability for the debt in this case was assigned to her ex-husband in the divorce proceedings, this Court finds that the Quit Claim Deed does not demonstrate that Petitioner is released from her repayment obligation. As a cosigner to the Note, Petitioner is still jointly and severally liable for the obligation, pursuant to the terms of the Note. (Ex. 1, ¶ 9; *see also Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987) (determining that "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together.")) Moreover, in order to demonstrate that she is no longer liable for all or any part of the debt, Petitioner must either provide a release in writing from the lender specifically discharging his obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release. *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb. 28, 1986). Petitioner's evidence does not establish that the requirements for a valid release have been met. Therefore, Petitioner's evidence is insufficient to establish release of Petitioner's obligation to repay and the Secretary may proceed against Petitioner for the full amount of the debt. I, therefore, find that Petitioner is indebted to HUD I the amounts claimed by the Secretary.

As to Petitioner's second claim that HUD's proposed repayment schedule would result in a financial hardship, the Court finds that Petitioner has failed to submit the requisite documentary evidence necessary to demonstrate financial hardship. In order to support such a claim, Petitioner must prove by a preponderance of the evidence that the terms of the repayment schedule would cause a financial hardship. 31 C.F.R. § 285.11(f)(8)(ii). If financial hardship is demonstrated, this Court may adjust the rate of garnishment accordingly. 31 C.F.R. § 285.11(k)(2); *see also Judith Herrera*, HUDOA No. 12-M-CH-AWG27 (July 13, 2012).

Petitioner's pay statement indicates that her bi-weekly gross pay is roughly \$569.97. (Pet'r's Docs.) Petitioner incurs deductions for Social Security in the amount of \$35.34 per pay period, Medicare in the amount of \$8.26 per pay period, federal income tax in the amount of \$18.00 per pay period, and a state income tax in the amount of \$20.33 per pay period. *Id.* Petitioner also incurs a child support wage garnishment in the amount of \$26.77 per pay period.<sup>3</sup> (Ex. 2, Porter Decl., ¶ 7; Pet'r's Docs.) These deductions total \$108.70 per pay period, or \$217.14 per month. When the pre-tax deductions, withholding taxes and child support garnishment are subtracted from Petitioner's gross pay she is left with a disposable pay of \$461.27 bi-weekly, or \$922.54 per month.

Petitioner also asserts that she has an increased monthly expense of Child Support in the amount of \$167.00 per month. (Pet'r's Docs.) Taking this increase in to account, Petitioner's wages will be garnished an additional \$56.73 per pay period, or \$113.46 per month. This reduces Petitioner's disposable pay to \$404.54 bi-weekly, or \$809.08 per month. To date, Petitioner has not provided further evidence of financial obligations which preclude her from satisfying her debt to the Secretary in the amount prescribed.

Petitioner was afforded the opportunity to file supporting documentation of her financial hardship claim. (Revised Notice of Docketing, at 2.) Despite this opportunity, Petitioner has failed to produce sufficient evidence of financial hardship. While Petitioner disputes the garnishment amount, this Court has long-held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due 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).)

However, I find that the Secretary is precluded from garnishing Petitioner's wages at this time. Federal regulations provide that "the amount to be garnished shall be the lesser of: (1) an amount up to 15% of the debtor's disposable pay, or (2) "the amount which is set forth in 15 U.S.C. § 1673(a)(2)," which is the "amount by which a debtor's disposable pay exceeds an amount equivalent to thirty times the minimum wage." 31 C.F.R. § 285.11(i); 15 U.S.C. 1673(a)(2). Petitioner's disposable pay in the amount of \$809.08 per month falls below the regulatory threshold for administrative wage garnishment.

Accordingly, I find the debt in this case to be past due and legally enforceable against Petitioner. Nevertheless, I find that the Secretary is precluded from garnishing Petitioner's wages at this time because Petitioner's disposable pay falls below the regulatory threshold set forth in 31 C.F.R. § 285.11(i)(2)(B).

### **ORDER**

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is


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<sup>3</sup> Petitioner's pay statement reflects a child support garnishment that is entitled to priority treatment in calculating Petitioner's disposable pay. 31 CFR §285.11(i)(3).

**ORDERED** that the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain in place, INDEFINITELY.

However, the Secretary shall not be prejudiced from pursuing this administrative wage garnishment in the future, if Petitioner's disposable pay increases to a rate above the regulatory threshold.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read 'H. Alexander Manuel', written over a horizontal line.

H. Alexander Manuel  
Administrative Judge