

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

In the Matter of:

**Melinda M. Weemes,**

Petitioner.

HUDOHA 14-VH-0004-AG-004  
Claim No. 780715519

June 19, 2014

**DECISION AND ORDER**

On October 17, 2013, Melinda M. Weemes (“Petitioner”) filed a *Hearing Request*, along with limited documentary evidence, concerning a proposed administrated 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 debt. Thereafter, Petitioner must present by a preponderance of the evidence that no debt exists, the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). Furthermore, Petitioner may present evidence that the terms of any 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 History**

Petitioner filed a request for a hearing on October 17, 2013, concerning a proposed wage garnishment order sought by the Secretary relating to a debt owed to the U.S. Department of Housing and Urban Development (“HUD”). Pursuant to 31 C.F.R. § 285.11(f)(4), 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*”), dated October 17, 2013. To this date, Petitioner has failed to file, in response to subsequent Orders issued by this Court, additional documentary evidence that would otherwise support her claim that all or part of the subject debt is not past due or not legally enforceable. *Order for Documentary Evidence*, December 6, 2013; *Order to Show Cause*, January 13, 2014. On October 29, 2013, the Secretary

filed a *Statement* along with documentation in support of his position. This case is now ripe for review.

### **Background**

On April 13, 2004, Petitioner executed and delivered to Clayton Greeneville a/k/a CMH Homes, Inc. a Retail Installment Contract-Security Agreement (“Note”) in the amount of \$28,596.78. *Secretary’s Statement* (“*Sec’y Stat.*”). ¶ 2, filed October 29, 2013; Exh. A. Pursuant to Title I of the National Housing Act, the Note was insured against nonpayment by the Secretary. *Sec’y Stat.*, ¶2. The Note was assigned by Clayton Greeneville to Vanderbilt Mortgage and Finance, Inc. on April 13, 2004. *Sec’y Stat.*, ¶3. After default by Petitioner, the Note was assigned to HUD by Vanderbilt Mortgage and Finance, Inc. *Sec’y Stat.*, ¶4.

HUD has attempted to collect on the amount due under the Note, but Petitioner remains in default. *Sec’y Stat.*, ¶5. As a result, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$15,865.39 as the unpaid principal balance as of September 30, 2013;
- (b) \$2,188.62 as the unpaid interest on the principal balance at 3% annum through September 30, 2013;
- (c) \$62.92 as the unpaid penalties and administrative costs as of September 30, 2013; and
- (d) Interest on said principal balance from October 1, 2013 at 3% per annum until paid.

*Sec’y Stat.*, ¶5; Exh. C, *Declaration of Brian Dillon*<sup>1</sup> (“*Dillon Decl.*”), ¶4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated August 26, 2013, was sent to Petitioner. *Sec’y Stat.*, ¶7; Exh. C, *Dillon 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 with HUD, but did not elect to do so, as of August 26, 2013. A Wage Garnishment Order was issued to Petitioner’s employer on September 27, 2013. *Sec’y Stat.*, ¶8; Exh. C, *Dillon Decl.*, ¶7. Based on the issuance of the Wage Garnishment Order, Petitioner’s pay was garnished one time, totaling \$132.06. That garnishment payment has not yet been posted to HUD’s account and is not reflected in the outstanding balance now due. *Sec’y Stat.*, ¶9; Exh. C, *Dillon Decl.*, ¶8. HUD has since determined that Petitioner’s employer miscalculated the garnishment amount. The garnishment amount Petitioner’s employer withheld was \$132.06, rather than the correct amount of \$124.43. *Sec’y Stat.*, ¶10; Exh. C, *Dillon Decl.*, ¶10. Due to the miscalculation, Petitioner will be refunded \$8.63. On October 28, 2013, HUD contacted the Petitioner about the overpayment of \$8.63 by her employer. Petitioner waived her right to refund and asked to have the \$8.63 applied towards the outstanding balance due. *Sec’y Stat.*, ¶11; Exh. C, *Dillon Decl.*, ¶11. Petitioner’s employer has acknowledged the incorrect garnishment amount and has indicated that future garnishments will be calculated at 15% of Petitioner’s disposable pay in accordance with the Wage Garnishment Order. *Sec’y Stat.*, ¶12; Exh. C, *Dillon Decl.*, ¶12. Based on a review of Petitioner’s bi-weekly pay statement for the period ending October 5, 2013, the Secretary, after

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<sup>1</sup> Brian Dillon is Director of the Asset Recovery Division of HUD’s Financial Operations Center.

accounting for allowable deductions, proposes a bi-weekly repayment schedule of \$123.43 or 15% of Petitioner's disposable pay. *Sec'y Stat.*, ¶13; Exh. C, *Dillon Decl.*, ¶9.

### Discussion

Petitioner does not dispute the existence of the debt. Rather, Petitioner argues that the terms of the proposed repayment schedule would cause her a financial hardship. Petitioner states, "I can pay \$100.00 a month on this debt[,] that's all I can do at this time. I live on a fixed income, and with medication, I have to move, bills, gas for work, groceries, [animal] food, and incoming doctor bills I try to pay off or pay payments on each check." *Petitioner's Hearing Request* ("Hearing Request"), filed October 17, 2013. In support of her financial hardship claim, Petitioner submits as evidence a copy of a medical bill that identified several prescriptions, and also a copy of a list of various items of expenses she recently had incurred.

The Secretary argues, on the other hand, that the alleged debt is past-due and legally enforceable in the full amount as claimed. *Sec'y Stat.* ¶5. The Secretary produced a copy of a Security Agreement where Petitioner signed and agreed to pay the seller the unpaid balance in the event of a default. *Sec'y Stat.*; Exh. A, Retail Installment Contract – Security Agreement ("Security Agreement"). As support, the Secretary produced a copy of a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director substantiates the debt amount owed by the Petitioner. *Sec'y Stat.*; Exh. C, *Dillon Decl.*, ¶4.

Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Shone Russell, HUDOA No. 09-H-NY-KK15 (June 25, 2009) (citing Raymond Kovalski, HUDBCA No. 87-1681-G18 (December 8, 1986)). However, existence of financial hardship requires a mitigation of the amount of the garnishment allowable by law. 31 C.F.R. § 285.11(k)(3). The documentation submitted by Petitioner was a list of alleged expenses that included expenses for cat food and cat medication (\$50); dog supplies (\$40); bird (cockatiel) food (\$22); sweet feed (\$0); horse stall shavings (\$75); shoe bills (\$60); groceries (\$220); gas for travel to and from work (\$170); and an anesthesiologist bill (\$25), which total \$662 a month. (*Hearing Request*, attaches, filed October 17, 2013). A mere list of alleged expenses, without documentation to substantiate the same, is insufficient as proof that the proposed wage garnishment amount would cause financial hardship for Petitioner. While evidence of essential household expenses, such as rent and food, may be used to establish financial hardship, such evidence must include proof of payment. Here, Petitioner has failed to provide such proof of payment despite being ordered by the Court to do so on three occasions. (*Notice of Docketing; Order for Documentary Evidence; Order to Show Cause.*)

This Court has the authority to order garnishment at a lesser rate based upon the record before it. 31 C.F.R. §285.11(k)(3). However, after reviewing the record in this case, the Court finds no evidence of record that substantiates Petitioner's claim of financial hardship. In the absence of documentary evidence to support Petitioner's alleged expenses, this Court is unable to determine whether the administrative wage garnishment sought by the Secretary would constitute financial hardship for Petitioner under 31 C.F.R. § 285.11(f)(8)(ii). (See also Mary Baker, HUDBCA No. 05-D-NY-AWG06 (March 23, 2005). Accordingly, the Court finds that

the debt that is the subject of this proceeding is past-due and enforceable in the amount as claimed by the Secretary.

In addition, Petitioner also states, "I can make a partial payment on the 13<sup>th</sup> of September. I will send another payment on the 27<sup>th</sup> if that's okay with you all." *Hearing Request*. 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 Michael DeMarco, 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).

### **Order**

Based on the foregoing, the Order imposing the Stay of Referral of this 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 in an amount of \$123.43, or equal to 15% of Petitioner's disposable income.

**SO ORDERED,**



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Vanessa L. Hall  
Administrative Judge