

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

In the Matter of:

**Gregory Strantz,**

Petitioner.

14-VH-0092-AG-040

780754419-OA

April 6, 2015

**DECISION AND ORDER**

On May 9, 2014, Gregory Strantz (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary” or “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 United States Government.

**Applicable Law**

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary 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 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 May 9, 2014, this Court stayed the issuance of a wage garnishment order until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”). On May 22, 2014, Petitioner submitted documentary evidence in support of her position. On June 9, 2014, the Secretary filed his *Statement* along with documentation in support of her position. This case is now ripe for review.

## **Background**

On or about June 13, 2006, Petitioner executed and delivered to 21<sup>st</sup> Mortgage Corp. an Installment Contract-Security Agreement (“Note”) in the amount of \$35,720. *Secretary’s Statement* (“*Sec’y Stat.*”) ¶ 2, filed June 9, 2014; Ex. 1, Note. The Note was insured against nonpayment by the Secretary. *Sec’y Stat.*, ¶ 3; *Declaration of Brian Dillon*<sup>1</sup> (“*Dillon Decl.*”), ¶ 4.

Upon Petitioner’s default, the Note was assigned to HUD. *Sec’y Stat.*, ¶ 4; Ex. 3, Assignment of Note. The Secretary has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. The Secretary alleges that Petitioner is indebted in the following amounts:

- (a) \$7,096.68 as the unpaid principal balance as of May 15, 2014;
- (b) \$3.00 as the unpaid interest on the principal balance at 1% per annum from May 15, 2014 until paid;
- (c) Interest on said principal balance from May 16, 2014 at 1% per annum until paid.

*Sec’y Stat.*, ¶ 6; *Dillon Decl.*, ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Garnishment Notice”), dated May 13, 2013, was mailed to Petitioner. *Sec’y Stat.*, ¶ 7; Ex. 2, *Dillon Decl.*, ¶ 5. The Garnishment Notice offered Petitioner the opportunity to enter into a written repayment agreement with HUD, but he has not done so. *Sec’y Stat.*, ¶ 8; *Dillon Decl.*, ¶ 6. A Wage Garnishment Order was issued to Petitioner’s employer on June 27, 2013. *Dillon Decl.*, ¶ 7; Ex. A, *Garnishment Order*. HUD has received four garnishment payments to date, totaling \$646.98. *Dillon Decl.*, ¶ 8.

After being contacted by Petitioner, HUD subsequently reduced the garnishment to \$80.00 per pay period and issued a Revised Wage Garnishment Order (“Revised Order”). *Id.* at ¶ 9, 10; Ex. B, *Revised Order*. HUD has received 18 payments pursuant to the Revised Order, totaling \$1,440.00. *Sec’y Stat.*, ¶ 12.

The Secretary proposes a garnishment repayment schedule of \$80.00 per pay period, or \$160.00 per month. *Sec’y Stat.*, ¶ 14.

## **Discussion**

In this case, Petitioner does not dispute the existence or the amount of the debt but instead claims that the current garnishment amount is causing financial hardship. (*Petitioner’s Hearing Request* (“*Hearing Request*”), filed May 22, 2014.) More specifically, Petitioner claims, “I have since been put into the red and in debt with the current garnishment. In addition to my current debt/bills, an additional \$114.00 per check will be taken out due to health coverage. I cannot survive.”

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

In order to show financial hardship, Petitioner “must submit ‘particularized evidence,’ including proofs of payment, showing that [s]he will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” Ray J. Jones, HUDAJF 84-1-OA at 2 ( March 27, 1985). In support of his claim of financial hardship, Petitioner provided a list of his claimed expenses and copies of several bill statements. *Petitioner’s Documentary Evidence* (“*Pet’r’s Doc. Evid.*”), filed May 22, 2014. Petitioner did not include as evidence a copy of his pay statement, but the record contains sufficient documentation of Petitioner’s income for consideration by the Court. (See *Sec’y Stat.*, Ex. C.) There is no record that Petitioner has challenged the accuracy of the pay statement contained in the record.

Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986). 24 C.F.R. § 285.11(k)(3) provides that if financial hardship is found this Court may downwardly adjust the garnishment amount to better reflect the debtor’s financial condition. When considering a claim of financial hardship, the Court reviews the Petitioner’s disposable income, alleged monthly expenses, and supporting documentation. Disposable income is defined as “that part of the debtor’s compensation from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes.” 31 C.F.R. § 285.11(c).

Based on Petitioner’s pay statement, his monthly disposable income is \$1945.14, after subtracting his monthly deductions for: federal income tax, \$70.41; Social Security tax, \$76.19; state tax, \$42.00; Medicare, \$17.82; health insurance, \$77.00; and garnishment amount, \$80.00.<sup>2</sup>

The adjusted monthly income amount (monthly disposable income less essential monthly expenses) provides the framework for determining the existence of financial hardship. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05 (January 20, 2012). This Court has held that where sufficient documentation is lacking, credit may be given for certain essential household expenses when the “financial information submitted by Petitioner ... [was found to be] generally credible....” Reed, p. 4 (citing Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). Here, Petitioner has provided proofs of payment for a number of essential monthly expenses: mortgage, \$572.06; safe security, 8.00; electricity, \$44.18; water, \$54.08; trash collection, \$9.50; gas, \$32.19; gasoline, \$120.00; car payment, \$427.67; automobile insurance, \$71.20; cell phone, \$52.24; credit cards, \$185.00. The Court has determined that the expense associated with the credit cards is not an essential household expense. Based upon the credit card statement provided by Petitioner, certain line items charged to the Capital One credit card were determined by the Court to be for non-essential household expenses (i.e. Netflix, Columbia House, Amazon.com, 1-800-Flowers.com, and Michaels Store). It was difficult to determine, with certainty, whether the charges on the statements for the other credit cards, Visa and Mastercard, included items that were deemed to be essential household expenses. As a result, the total amount listed for the credit card bills will not be included as an essential household expense. Based on the proofs of payment provided by Petitioner, his alleged monthly expenses

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<sup>2</sup> Based on Petitioner’s previous request directly to HUD for reduction due to hardship, HUD reduced the garnishment amount from \$153.35 per pay period to \$80.00 per bi-weekly pay period, and subsequently issued a Revised Wage Garnishment Order (“Revised Order”). *Id.* at ¶ 9, 10; *Ex. B, Revised Order*.



total \$1391.12. This amount falls well below Petitioner's monthly disposable income of \$1945.14, and yields a positive monthly balance of \$554.02, an amount that would more than adequately cover any remaining expenses for food and clothing that to date have not been documented by Petitioner in the record of this proceeding. As a result, the Court finds that Petitioner's claim of financial hardship fails for lack of sufficient proof.

The Government now seeks authorization of a repayment schedule to recover the subject debt at a bi-weekly amount of \$80.00 per pay period. As support, the Government produced a copy of the Note in which Petitioner promised to pay "the Unpaid Balance shown with the interest rate of 10.99% per year until the debt is fully paid." *Sec'y. Stat.*, Ex. 1, PROMISE TO PAY. Such has not occurred in this case and therefore Petitioner must comply with the terms of the agreement. The Government also introduced into evidence a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director provided further proof that the subject debt was legally enforceable against Petitioner. *Sec'y. Stat.*, Ex. 2, ¶ 4. Citing In re Ray J. Jones<sup>3</sup> and August C. Frazier,<sup>4</sup> the Government states that, in order to show financial hardship, Petitioner "must submit 'particularized evidence,' including proofs of payment, showing that she will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation." *Sec'y. Stat.*, ¶ 10.

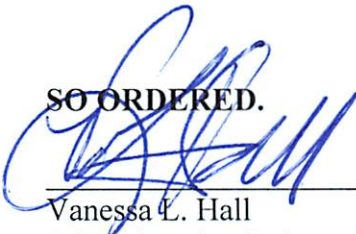
The Court agrees with the Secretary that Petitioner has failed to meet his burden of proof for a financial hardship claim. Based on the evidence presented, the Court is fully persuaded that the current garnishment repayment schedule of \$80.00 bi-weekly would not create a financial hardship for Petitioner. The Court therefore finds that Petitioner remains legally obligated to pay the subject debt in the amount so claimed by the Secretary.

### **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of 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 at a garnishment repayment schedule of \$80.00 bi-weekly.

**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.

<sup>3</sup> Ray J. Jones, HUDAJF 84-1-OA at 2 ( March 27, 1985).

<sup>4</sup> August C. Frazier, HUDALJ 86-05-OA at 2 (April 11, 1986).