

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

In the Matter of:

**Celia Hernandez**

Petitioner.

15-AM-0018-AG-006

721006086-OA

July 16, 2015

**DECISION AND ORDER**

On November 19, 2014, Celia Hernandez (“Petitioner”) filed a *Hearing Request* (“*Hr’g Req.*”) concerning a proposed wage garnishment sought by the Secretary relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the 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 allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. (24 C.F.R. § 17.81.) 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. On November 20, 2014, the Court issued a *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) that stayed the issuance of a wage garnishment order until the issuance of this *Decision and Order*. (See 31 C.F.R. § 285.11(f)(4).)

**Background**

On or about November 10, 1999 and January 10, 2001, Petitioner executed and delivered to the Secretary two Subordinate Notes (“Notes”) in the total amount of \$8,357.33. (*Secretary’s Statement* (“*Sec’y Stat.*”) ¶ 2, filed December 19, 2014.) In return, HUD advanced funds to Petitioner’s mortgage lender, thereby allowing Petitioner to avoid foreclosure on her home. (*Sec’y Stat.* ¶ 3; Ex. 1, *Declaration of Brian Dillon*<sup>1</sup> (“*Dillon Decl.*”), ¶ 4.) The Notes cited specific events that made the debts due and payable. (*Dillon Decl.*, ¶ 4.) One of those events was Petitioner’s payment in full of all amounts due under the primary note and related mortgage insured by the Secretary. *Id.*

On July 8, 2005, FHA terminated the insurance on the first mortgage, as the lender indicated the mortgage was paid in full. *Id.* HUD has attempted to collect on this claim, but

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

Petitioner remains delinquent. (*Sec'y Stat.* ¶ 6; *Dillon Decl.*, ¶ 5.) HUD sent to Petitioner a *Notice of Intent to Initiate Administrative Wage Garnishment* ("*Notice of Intent*") dated June 24, 2014. (*Sec'y Stat.* ¶ 8; *Dillon Decl.*, ¶ 6.) In accordance with 31 C.F.R. §285.11(e)(2)(ii), the *Notice of Intent* afforded Petitioner the opportunity to enter into a written repayment agreement to resolve the debt. (*Dillon Decl.*, ¶ 7.) Petitioner did not enter into a repayment agreement. *Id.* HUD received the *Notice of Intent* on November 19, 2014, completed and signed by Petitioner on October 5, 2014. The completed and signed *Notice of Intent* constitutes Petitioner's Hearing Request.

Department of Treasury records indicate that a Wage Garnishment Order was issued to Petitioner's employer on July 25, 2014. (*Sec'y Stat.*, ¶ 10; *Dillon Decl.*, ¶ 8.) Petitioner's pay has been garnished four times pursuant to the Wage Garnishment Order, totaling \$857.59. (*Sec'y Stat.*, ¶ 10; *Dillon Decl.*, ¶ 9.) Three of those garnishments, totaling \$615.72,<sup>2</sup> are reflected in the balance of Petitioner's debt as indicated below. The outstanding garnishment payment, dated November 24, 2014, was in the amount of \$241.87. (*Sec'y Stat.*, ¶10; *Dillon Decl.*, ¶ 9.) The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,115.23 as the total unpaid principal balance as of October 31, 2014;
- (b) \$10.29 as the unpaid interest on the principal balance at 3% per annum through October 31, 2014; and
- (c) interest on said principal balance from November 1, 2014, at 3% per annum until paid.

(*Sec'y Stat.*, ¶ 7; *Dillon Decl.*, ¶ 5.)

A *Wage Garnishment Notice* dated August 14, 2014, and completed by the Clint Independent School District, indicates that Petitioner's monthly gross wages are \$2,295.13. (*Sec'y Stat.*, ¶ 11; *Dillon Decl.*, ¶ 11.) After mandatory deductions, Petitioner's disposable wages total \$1,664.35 monthly. (*Sec'y Stat.*, ¶ 11; *Dillon Decl.*, ¶ 11.) Accordingly, the Secretary proposes a garnishment of 15% of Petitioner's disposable income and calculates that at \$249.65 per month. (*Sec'y Stat.*, ¶ 11; *Dillon Decl.*, ¶ 11.)

### **Discussion**

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, 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). Petitioner may also 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.*

As evidence of Petitioner's indebtedness, the Secretary has filed a statement supported by documentary evidence, including a copy of the Notes signed by Petitioner, and the sworn

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<sup>2</sup> These three garnishments averaged \$205.24 per month.

declaration of the Director of HUD's Asset Recovery Division. (*Sec'y Stat.*, Ex. 2, Ex. 3, Ex. 1.) Accordingly, the Court finds the Secretary has met his initial burden of proof.

Petitioner disputes the amount of the debt. (*Hr'g Req.*) In a letter to the Court, Petitioner states, "I would like to receive credit for all the money that was already...garnished from my income." (*Petitioner's Documentary Evidence* ("Pet'r's Doc. Evid."))

HUD has already reduced Petitioner's debt by the amount that the Department of Treasury has garnished from Petitioner's wages to date. (*Sec'y Stat.*, ¶ 10; *Dillon Decl.*, ¶ 9.) Accordingly, to the extent that Petitioner's dispute of the amount of her outstanding debt is based on a claim that HUD has not accounted for the amount already garnished from Petitioner's wages, the Court finds Petitioner's claim is without merit. (*Sec'y Stat.*, ¶ 10; *Dillon Decl.*, ¶ 9.)

Petitioner further claims that the debt is not due to be paid in full until June 2025.<sup>3</sup> (*Pet'r's Doc. Evid.*) Petitioner's reliance on this language of the Notes is misplaced. As discussed in the Background section *supra*, the Notes state that specific events made the debt due and payable immediately. One of those events was Petitioner's payment in full of all amounts due under the primary note and related mortgage insured by the Secretary. (*Sec'y Stat.*, Ex. 2, Ex. 3.) This occurred on July 8, 2005, when FHA terminated the insurance on the first mortgage based on the lender's indication that the mortgage was paid in full. This event made payment in full of the entire debt due immediately. *Id.* The Court therefore finds this claim by Petitioner to be without merit.

Finally, Petitioner alleges that the proposed garnishment amount will create a financial hardship because she is a sole head of household. *Id.* The *Notice of Docketing* instructed Petitioner to provide this evidence on or before January 9, 2015. She did so in the form of the written remarks on her Hearing Request as indicated at footnote 3 *infra*. On January 26, 2015, the Court issued an *Order for Documentary Evidence* ("January 26 Order") ordering Petitioner to file the relevant evidence on or before February 12, 2015. The *January 26 Order* specifically stated:

If Petitioner maintains that repayment of the alleged debt in this case would result in undue financial hardship, Petitioner may file evidence to prove such hardship. Any such proof must be in the form of documentary evidence and must consist of pay statements and proof of actual payment of necessary household expenses, e.g., receipts, bank statements, and copies of checks, money orders, etc., for payment of mortgage, rent, food, transportation, necessary medical expenses, and other basic household necessities. Petitioner may file an affidavit or sworn declaration in support of Petitioner's legal arguments and evidence.

(*January 26 Order*, p. 1.)

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<sup>3</sup> The Court suspects that this date is a mere oversight or typographical error by Petitioner; the copies of the two Notes indicate that they were both due to be paid in full on June 1, 2023, or earlier. (*Sec'y Stat.*, Ex. 2, Ex. 3.)

In Petitioner's Documentary Evidence, which was timely filed on February 11, 2015, in response to the *January 26 Order*, she stated that she was "facing financial issues[]" as the "only head of household...." (*Pet'r's Doc. Evid.*) Petitioner included two pay statements to support her claim of financial hardship, the first statement dated December 19, 2014, and the second dated January 16, 2015. *Id.* These statements indicated gross monthly wages of \$1697.91 and \$1586.75 respectively. *Id.* Aside from the pay statements, Petitioner provided no further explanation or documentation to support her claim of financial hardship, and there is no such evidence currently in the record. Without proof of essential household expenses, the Court cannot determine whether the garnishment of Petitioner's disposable pay would result in financial hardship. Petitioner has therefore failed to support her claim of financial hardship.<sup>4</sup> The Court consistently holds that "assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

While this Office has given credit for certain essential household expenses where Petitioner has not provided bills or other supporting documentation, *Elva and Gilbert Loera*, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004), the Court cannot do so in this case because Petitioner has not provided even a bare list of her monthly expenses. Such credit is typically given only when "the financial information submitted by Petitioner[] [is] generally credible..."

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<sup>4</sup> In the absence of a detailed explanation of her current financial hardship and further documentation to support that claim, the Court presumes that Petitioner included the two monthly pay statements with her Documentary Evidence to support her earlier claim (made in her Hearing Request) that the pay period upon which the Clint Independent School District based its calculations for the amount to be withheld from her monthly pay (Wage Garnishment Notice) included pay for 8 hours of annual training that is not included in her regular monthly pay. The evidence in the Record pertinent to Petitioner's presumed claim is unclear.

In her Hearing Request, Petitioner indicated on the attached Wage Garnishment Notice that the gross monthly wages reported by the Clint Independent School District included "summer work xtra" [sic]. On the supporting pay statement, Petitioner indicated that the period included "xtra working late 8 hrs training once a year" [sic]. The gross wages for the pay period indicated on the supporting pay statement are \$1664.35. Oddly, The Clint Independent School District lists Petitioner's gross monthly wages as \$2295.13, which is \$630.78 more than the gross monthly wages indicated on the supporting pay statement. (Wage Garnishment Notice.)

It is unclear why the gross monthly wages used to calculate the monthly amount to be garnished from Petitioner's pay is \$630.78 more than the gross monthly wages indicated on the Supporting Pay Statement. It is unlikely that this difference accounts for the 8 hours of annual training that Petitioner indicated on the pay statement. First, on the pay statement upon which Petitioner indicated she worked the additional 8 hours for annual training her gross monthly pay is listed as \$1664.35. (Wage Garnishment Notice, Supporting Pay Statement.) Presumably, then, that total of \$1664.35 already includes any "extra" pay for the indicated 8 hours of annual training. Second, assuming that the \$1664.35 does not include pay for the 8 hours of annual training and the pay for those 8 hours of annual training is included in the \$2295.31 in gross wages listed on the Wage Garnishment Notice, then Petitioner was paid the difference between those two listed gross wage amounts, or \$630.78, for those 8 hours of annual training. This assumption results in an unlikely hourly pay rate of \$78.85.

With no definitive evidence or explanation in the documentary record for Petitioner's actual gross monthly wages, the Court would use the limited evidence available to determine a reasonable figure for Petitioner's gross monthly wages. Petitioner's gross monthly wages as indicated in the three Pay Statements included in the record average \$1649.74.

The only evidence in the Record of Petitioner's mandatory deductions from her gross month wages indicates that they total \$615.72. (*Sec'y Stat.*, ¶ 11; *Dillon Decl.*, ¶ 11; Wage Garnishment Notice.) Subtracting that amount from Petitioner's estimated gross monthly wages of \$1649.74 results in monthly disposable wages of \$1034.02.

Id. Moreover, to give Petitioner credit for any essential monthly expenses, the Court would have to assign its own value to those expenses. The Court will not engage in such speculation. Instead, Petitioner may wish to negotiate repayment terms with HUD. The Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with Michael DeMarco, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 2859. Petitioner may also request a review of her financial status by submitting to that HUD Office a Title I Financial Statement (HUD Form 56142).

### **ORDER**

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment issued on November 20, 2014, 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 the amount of fifteen (15) percent of Petitioner's disposable income.<sup>5</sup>

**SO ORDERED.**

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

H. Alexander Manuel  
Administrative Judge

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<sup>5</sup> Based on the discussion in footnote 4, *supra*, the Court would calculate 15% of Petitioner's current disposable income at \$155.10 per month (\$1034.02 x 15%).