

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

In the Matter of:

DEIDRA N. CANNON,

Petitioner.

15-VH-0014-AG-003

721004688

May 12 , 2016

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (Hr'g. Req.) filed by Petitioner, Deidra N. Cannon, on November 11, 2014 concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (Secretary or HUD).

Pursuant to Title 24 of the Code of Federal Regulations, § 285.11(f)(4), on November 17, 2014, this Court stayed the referral by HUD of this matter to the U.S. Department of Treasury for the issuance of an administrative wage garnishment order until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (Notice of Docketing) at 2. On December 16, 2014, the Secretary filed a *Secretary's Statement* (Sec'y. Stat.), along with documentary evidence in support of his position. Petitioner did not file documentary evidence in support of her claim of financial hardship but instead requested a reduction in her garnishment amount to resolve the matter pending before the Court. This case is now ripe for review.

JURISDICTION

The Office of Hearings and Appeals has jurisdiction to decide whether the Secretary can seek to collect an alleged debt by means of administrative wage garnishment 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, by a preponderance of the evidence, the existence and amount of the debt in dispute. See 31 C.F.R. § 285.11(f)(8)(i). Thereafter, Petitioner must show, by a preponderance of the evidence, that the alleged debt is non-existent or unenforceable, or that the amount of the debt is in error. See 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.*

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, as a result of a defaulted loan that was insured against non-payment by 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.

On or about April 3, 2002, Petitioner and Earl B. Cannon executed and delivered to the Secretary a Partial Claim Promissory Note (Note) in the amount of \$5,770.80. *Sec'y. Stat.*, ¶ 2. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender, and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.*, ¶ 3; Ex. 2, *Declaration of Brian Dillon*¹ ("*Dillon Decl.*"), ¶ 4. The Note secured a Subordinate Mortgage (Mortgage) held by the Secretary. *Sec'y Stat.* ¶ 2. By the terms of the Note, "the amount to be repaid thereunder becomes due and payable when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principal residence." *Sec'y. Stat.*, ¶ 4; Ex. 1, ¶ 3. On or about April 29, 2004, the Petitioner's first mortgage was paid in full and the FHA mortgage insurance was terminated. The Secretary has made efforts to collect this debt from Petitioner, but has been unsuccessful. *Sec'y. Stat.*, ¶ 4. As a result, Petitioner remains in default on the Note and is indebted to the Secretary in the following amounts:

- (a) \$5,770.80 as the unpaid principal balance as of October 31, 2014;
- (b) \$1,230.28 as the unpaid interest on the principal balance at 4.0% per annum through October 31, 2014;
- (c) \$1,597.25 as the unpaid penalties and administrative costs as of October 31, 2014; and
- (d) Interest on said principal balance from November 1, 2014 at 4.0% per annum until paid.

Sec'y Stat. ¶ 7, Ex. 2, *Dillon Decl.* ¶ 5.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (Notice), dated July 17, 2014 was sent to Petitioner. *Sec'y. Stat.*, ¶ 6; Ex. 2, *Dillon Decl.* ¶ 6. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement. *Sec'y. Stat.*, Ex. 2, *Dillon Decl.* ¶ 7. But, Petitioner did not enter into a written repayment agreement or pay the debt in full in response to the Notice. *Sec'y Stat.*, Ex. 2, *Dillon Decl.* ¶ 7.

Consequently, on August 19, 2014, the U.S. Department of the Treasury ("Treasury") issued a Wage Garnishment Order to Petitioner's employer. *Sec'y. Stat.*, Ex. 2, *Dillon Decl.* ¶ 8. Based on the issuance of the Wage Garnishment Order, HUD has received three payments through October 24, 2014. *Id.* These payments have been credited to Petitioner's account, and are reflected in the outstanding balance shown above. *Id.*

¹ Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

DISCUSSION

In this case, the parties agree that they have no dispute regarding the existence or enforceability of the alleged debt and no dispute about the amount of the alleged debt as so claimed by the Secretary.

Petitioner instead claims, in her *Hearing Request (Hr'g Req.)*, that the proposed 15% wage garnishment will put her "in a financial hardship as I am a single parent." Petitioner first submits a notice of a change of address that now reflects her current address, "[REDACTED]" and then requests a reduction in the wage garnishment amount by requesting "the opportunity to set up a payment arrangement" to pay in full her existing debt. *Hr'g. Req.*

In response, the Secretary acknowledges in his *Statement* that Petitioner submitted a request to reduce the wage garnishment amount. Upon consideration of Petitioner's financial situation, the Secretary has accepted Petitioner's request for reduction of the garnishment amount to \$100.00 bi-weekly. *Sec'y Stat.* ¶ 9; Ex. 2, *Dillon Decl.* ¶ 9. In accordance with the agreement between HUD and Petitioner, the Secretary's proposed repayment schedule has now been reduced to \$100.00 per pay period for Petitioner. *Sec'y Stat.* ¶ 10, Ex. 2, *Dillon Decl.* ¶ 10.

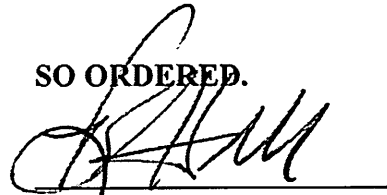
ORDER

Based on the foregoing, Petitioner remains legally obligated to pay the alleged debt in the amount claimed by the Secretary.

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 for the reduced garnishment amount of \$100.00 bi-weekly until the subject debt is paid in full.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

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 upon a showing of good cause.