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

In the Matter of:

Charles Tyson,

Petitioner.

16-AM-0034-AG-006

780762974

July 24, 2017

DECISION AND ORDER

On April 8, 2015, Charles Tyson (“Petitioner”) was notified by the United States Department of Treasury (“Treasury”) that his wages would be subject to administrative wage garnishment, due to an alleged debt owed to the U.S. Department of Housing and Urban Development (“HUD or “the Secretary”), if he did not cure the debt or enter into a repayment agreement by May 8, 2015. A Wage Garnishment Order was issued to Petitioner’s employer on May 9, 2015. (Declaration of Brian Dillon (“Dillon Decl.”), ¶ 7.)

On February 1, 2016, Petitioner requested a hearing to contest whether this alleged debt owed to HUD is past due or legally enforceable. The Office of Hearing and Appeals has been designated to determine whether the debt is legally enforceable. 24 C.F.R. § 17.69(c). Because of Petitioner’s hearing request, Treasury was obligated to stay further garnishments within 61 days of receiving the notice of stay, until the issuance of this written decision by the Administrative Judge. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”)). On February 16, 2016, the Secretary filed his *Statement* along with documentary evidence. To date, Petitioner has only filed evidence which seeks to prove that repayment of the subject debt, in the manner proposed by the Secretary, would cause him financial hardship.

Background

On March 26, 2009, Petitioner executed and delivered a Note to Domestic Bank in the amount of \$16,181.00, which was insured against nonpayment by the Secretary. (Sec’y Stat., ¶ 2.) Petitioner failed to make payment on the Note as agreed. (Sec’y Stat., ¶ 3.) Consequently, in accordance with 24 C.F.R. § 201.54, on January 27, 2014, Admirals Bank f/k/a Domestic Bank assigned the Note to the United States of America. *Id.* The Secretary is the holder of the Note on behalf of the United States. *Id.*

The Secretary's attempts to collect this alleged debt from Petitioner have been unsuccessful. (Sec'y Stat., ¶ 4.) The Secretary asserts that Petitioner is indebted to the Secretary in the following amounts:

- a. \$14,137.56 as the unpaid principal balance as of January 31, 2016;
- b. \$117.80 as the unpaid interest on the principal balance at 1.0% per annum through January 31, 2016; and
- c. interest on said principal balance from February 1, 2016, at 1.0% per annum until paid.

(Sec'y Stat., ¶ 4, Dillon Decl., ¶ 4.)

Discussion

Petitioner disputes that this debt is past due or legally enforceable. In support, Petitioner filed evidence of household expenditures, but provided no other evidence. For Petitioner to prove that a debt owed to the Secretary has been satisfied, there must be a written release from HUD or evidence of valuable consideration accepted by HUD from Petitioner. See Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). The filed documents do not prove that a debt owed to the Secretary has been satisfied or that HUD accepted valuable consideration from the Petitioner. Id. Therefore, this evidence, standing alone, is insufficient support for Petitioner's argument that the subject debt is not past due or legally enforceable.

Petitioner's submission of household expenditures as evidence indicates that he is claiming that repayment of the subject debt, in the manner proposed by the Secretary, would create financial hardship. 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 (Dec. 8, 1986)). However, this Court has the discretion to mitigate the amount of garnishment allowable by law for reasons of financial hardship. See 31 C.F.R. §§ 285.11(k)(3). Petitioner must prove, by a preponderance of the evidence, that the proposed terms of debt repayment would create extreme financial hardship. See 31 C.F.R. §§ 285.11(f)(8)(ii). In order to meet this burden, 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. See Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985); Richard Johnican, 09-H-CH-AWG07 (Feb. 9, 2009).

Petitioner provided a copy of his biweekly pay statement indicates that his gross biweekly pay is \$967.72. Less allowable deductions of \$279.41 (Federal taxes \$114.34; Medicare \$14.03; Social Security \$60.00; PA Income Tax \$29.71; other taxes \$40.52; and Union dues \$20.81), Petitioner's biweekly net disposable pay is \$688.31. Administrative wage garnishment authorized at 15% of Petitioner's disposable pay would result in a biweekly repayment schedule under such garnishment order equal to \$103.25.

Petitioner has also provided a Consumer Debtor Financial Statement date October 27, 2015, along with proof of several household expenditures. The financial statement indicated that

Petitioner was single and the sole contributor of household income and expenditures. However, several of the expenses (Electric Bill \$190.76; Gas Bill \$190.00; Verizon Wireless \$140.75) listed by Petitioner are bills addressed to Pamela Jones. Petitioner also provided HUD with a Debt Resolution Financial Statement dated February 11, 2016. In his financial statement, Petitioner identifies Pamela Jones Wague as an employed family member. However, instead of providing her income, Petitioner stated, "Don't Know." The Court is unable to make an accurate financial hardship determination without a reliable estimate of Petitioner's household incomes and expenditures. Accordingly, Petitioner has failed to substantiate his financial hardship claim with a particularized disclosure of his household income and expenditures.

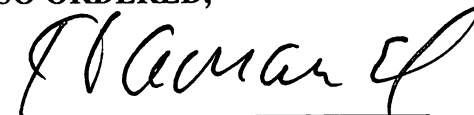
Upon reviewing the record, and the evidence presented by the parties, the Court finds that the debt in this case is past due and enforceable. In addition, the Court finds that Petitioner has not met his burden to prove that repayment of this debt, in the manner proposed by the Secretary, would cause Petitioner financial hardship.

ORDER

Based on the foregoing, the Order imposing the stay to Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding debt by means of administrative wage garnishment in the amount of 15% of Petitioner's disposable income.

SO ORDERED,

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

H. Alexander Manuel
Administrative Judge