

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

In the Matter of:

Teresita R. Uclaray,

Petitioner.

16-VH-0035-AG-007

721007982

December 7, 2016

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hr’g. Req.*”) filed by Teresita R. Uclaray (“Petitioner”), on February 1, 2016, concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”).

Pursuant to 24 C.F.R. § 17.81(a), on February 1, 2016, the Court stayed the issuance of an administrative wage garnishment order due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”). On March 2, 2016, the Secretary filed a *Secretary’s Statement*, which included documentation in support of his position. *Secretary’s Statement* (“*Sec’y Statement*”). Petitioner filed a *Statement* (“*Pet’r. Statement*”), along with documentary evidence on May 18, 2016. This case is now ripe for review.

JURISDICTION

The Office of Hearings and Appeals has jurisdiction to determine whether Petitioner’s debt is past due and legally enforceable pursuant to 24 C.F.R. §§ 17.61 *et seq.* The administrative judges of this Court, in accordance with the procedures set forth in 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing to determine, by a preponderance of the evidence, whether the alleged debt is past due and legally enforceable.

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, 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. § 3720A), 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 August 31, 2012, Petitioner, Roger C. Uclaray, and Randy R. Uclaray executed and delivered a Subordinate Note (“*Note*”) to the Secretary in the amount of \$20,785.77. *Sec’y Stat.*, ¶ 2. HUD advanced funds to Petitioner’s FHA insured mortgage lender as a means of providing foreclosure relief to Petitioner.¹ *Sec’y Stat.*, ¶ 3. In exchange for such funds, Petitioner executed the *Note* in favor of the Secretary. *Sec’y Stat.*, ¶ 3; Ex. 2, *Declaration of Brian Dillon*² (“*Dillon Decl.*”), ¶ 4. On or about September 26, 2014, the primary note and mortgage was paid in full, and the FHA mortgage insurance on the primary note was terminated. *Sec’y Stat.*, ¶ 5; *Dillon Decl.*, ¶ 4. Because the primary note and mortgage was paid in full, and the FHA mortgage insurance was terminated, the *Note* became immediately due and payable, pursuant to the terms of the *Note*. *Sec’y Stat.*; Ex. 2, *Note*.

HUD’s attempts to collect this alleged debt from Petitioner have been unsuccessful. *Sec’y Stat.*, ¶ 6; *Dillon Decl.*, ¶¶ 5, 6, and 7. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$20,785.77 as the unpaid principal balance as of February 1, 2016;
- b) \$138.48 as the unpaid interest on the principal balance at 1 % per annum through February 1, 2016;
- c) \$673.85 as the unpaid penalties and administrative costs as of February 1, 2016; and
- d) interest on said principal balance from January 31, 2016, at 1 % per annum until paid.

Sec’y Statement, ¶ 7; *Dillon Decl.*, ¶ 5.

On October 8, 2015, a *Notice of Intent to Collect by Administrative Wage Garnishment Proceedings* (“*Notice*”) was mailed to Petitioner. *Sec’y Statement*, ¶ 8; *Dillon Decl.*, ¶ 6.

DISCUSSION

Petitioner does not dispute the existence or the amount of the debt. Rather, Petitioner claims that repayment of this debt as proposed by the Secretary would cause Petitioner financial hardship.

Petitioner, in her *Statement*, claims the proposed repayment schedule would create a severe financial hardship for her. *Pet’r Stat.* Petitioner presented to the Court that her current pay had been reduced by 30 percent, and stated that she is currently on disability and thus unable to work because of her cancer diagnosis. *Pet’r Stat.* As support of her current financial state, Petitioner submitted copies of a pay stub from May 2, 2016 through May 8, 2016, and a letter that approved her disability from February 29, 2016 through September 1, 2016. *Pet’r Stat.* In addition, Petitioner explains that her husband’s military pension and Social Security benefits have been garnished, and has resulted in a further reduction of the monthly gross income for the household. *Pet’r Stat.* Petitioner finally claims again that she will be, “unable to meet basic needs especially my housing because garnishment amount is too high and will create financial hardship.” *Hr’g. Req.*

¹ Petitioner’s FHA insured mortgage lender was the holder of Petitioner’s primary mortgage note (“*primary note*”).

² Brian Dillon is the Director of the Asset Recovery Division of HUD’s Financial Operations Center.

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, the 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 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. See Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985); Richard Johnican, 09-H-CH-AWG07 (Feb. 9, 2009).

Herein, Petitioner submitted a copy of her biweekly paycheck for the pay period from May 2, 2016 through May 8, 2016. *Pet’r Stat.* The paystub reflects Petitioner’s annual income at approximately \$22,667.35 per year. *Pet’r Stat.* 31 C.F.R. § 285.11(c) defines disposable income as “the 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.” Based on Petitioner’s pay statements, her average biweekly gross salary is approximately \$700.00, or \$1,400.00 per month. After deducting Social Security (FICA) \$42.89; Medicare: \$10.03; CA State Tax: \$11.17; Dental Plan: \$5.55; and, Vision Plan: \$4.53 from Petitioner’s gross salary, Petitioner is left with an average disposable income of \$625.83 biweekly, or \$1,251.66 per month.

Petitioner also introduced, as evidence of her claim of financial hardship, an expense spreadsheet of monthly expenses incurred by Petitioner and her husband. More specifically, the itemized expenses are: mortgage: \$2,465.00 monthly; home insurance: \$106.00 monthly; local home taxes: \$204.00 monthly; gas and electric: \$430.00 monthly; automobile insurance: \$175.00 monthly; water: \$130.00 monthly; food and clothing: \$400.00 monthly; medical expenses: \$50.00 monthly; student loans: \$200.00 monthly; and second mortgage payments: \$209.00 monthly. *Hr’g. Req.* Thus, the total essential monthly expenses for their household is \$4,373.00.

Since Petitioner did not include in the spreadsheet an itemization of the expenses for which she is specifically responsible, the Court will account for Petitioner’s portion of the same at approximately 50% of the essential household expenses. So, Petitioner would be responsible for paying approximately \$2,186.50 per month towards monthly essentials.

Petitioner’s monthly disposable pay of \$1,251.66, less the total itemized expenses for basic subsistence costs in the amount of \$2,186.50, will result in a negative balance of (-\$934.84). The Secretary’s proposed repayment schedule of 15% of Petitioner’s disposable pay would further reduce Petitioner’s current monthly disposable pay an additional \$187.75, and further yield an increased negative monthly balance of \$1,122.59.

Upon reviewing the record, and the evidence presented by Petitioner, the Court finds that the proposed repayment schedule at the rate of 15% would constitute a financial hardship for Petitioner and render her unable to meet her monthly expenses for basic household expenses.

The Court thus finds that Petitioner has met her burden of proof by a preponderance of the evidence and successfully substantiated her claim of financial hardship. Accordingly, although interest and fees will continue to accrue for this debt, the Court further finds that the Secretary is precluded from collecting at this time.

ORDER

The *Order* imposing the stay of referral in this matter to the U.S. Department of Treasury for administrative wage garnishment will remain in place. It is hereby

ORDERED that the Secretary is not authorized at this time to seek collection of this outstanding obligation by means of administrative wage garnishment until such time as Petitioner's financial circumstances change.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of the Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 30 days of the date of the written decision, and shall be granted only upon a showing of good cause.