

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

In the Matter of:

Justin Andrusk,

Petitioner.

16-VH-0039-AG-011

780768260-OA

July 24, 2017

DECISION AND ORDER

On February 1, 2016, Justin Andrusk, (“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”). 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.

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f)(4), on February 1, 2016, 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 March 2, 2016, the Secretary timely filed his Statement that Petitioner’s debt is past due and legally enforceable.

Petitioner failed to timely file a response to this Court’s *Notice of Docketing*. Thus, the Court subsequently ordered Petitioner, on three occasions, to file sufficient documentary evidence showing that all or part of the subject debt is either not past due or is unenforceable. *Order for Documentary Evidence*, dated March 21, 2016; *Order to Show Cause*, dated April 29, 2016; *Second Order to Show Cause*, November 10, 2016. Petitioner was also notified in the subsequent *Orders* that failure to comply would result in sanctions pursuant to 24 C.F.R. § 26.4(c), including judgment being entered on behalf of the opposing party or a decision based on the documents in the record of the proceeding. *Id.* In addition, Petitioner was provided with a list with examples of documentary evidence or proofs of payment that would better demonstrate that he was indeed suffering from financial hardship and incapable of repaying the debt via administrative wage garnishment. To date, Petitioner has failed to file any documentary evidence in support of his claim, despite the Court ordering him to do so. This case is now ripe for review.

JURISDICTION

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.*

BACKGROUND

This debt resulted either from a defaulted loan which was insured against non-payment by the Secretary, from an overpayment by HUD, from delinquent rent payments due to HUD, or due to other reasons. This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

On or about September 20, 2006, Petitioner and his wife executed and delivered to Ohio State Waterproofing, a Home Improvement Retail Installment Contract-Ohio ("Note") in the amount of \$11,000. *Sec'y Stat.* ¶ 2. This Note was insured against nonpayment by HUD pursuant to Title I of the National Housing Act. *Sec'y Stat.* Ex. 2, *Declaration of Brian Dillon*,¹ ¶ 3 (*Dillon Decl.*). Simultaneously, the Note was assigned to South Central Bank, N.A ("South Central"). *Sec'y Stat.*, Ex. 1. After the Petitioner defaulted due to a failure to make the required payments, South Central assigned the Note to HUD. *Sec'y Stat.*, Ex. 3. This assignment occurred under the regulations governing the Title I Insurance Program. *Dillon Decl.* ¶ 3; *Sec'y Stat.*, Ex. 3.

Petitioner remains in default and is indebted to the Secretary in the following amounts:

- (a) \$2,097.72 as the unpaid principal balance as of January 30, 2016;
- (b) \$7.00 as the unpaid interest on the principal balance at 1% per annum through January 30, 2016; and
- (c) interest on said principal balance from February 1, 2016, at 1.0% per annum until paid and;
- (d) \$267.51 as unpaid Administrative Fees and Penalties.

Dillon Decl. ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice of Intent") dated June 30, 2015, was sent to Petitioner. *Sec'y*

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

Stat., ¶ 7. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter a written repayment agreement. *Sec'y. Stat.*, ¶ 9. Petitioner did not enter a written repayment agreement or pay the debt in full in response to the Notice of Intent. An Administrative Wage Garnishment Order was issued to Petitioner's employer on or about July 31, 2015. Petitioner's pay was garnished four times, totaling \$1,774.44. *Dillon Decl.* ¶¶ 7–8.

The Secretary's proposed repayment schedule is \$443.33 bi-weekly. Alternatively, the Secretary requests a repayment schedule equal to 15% of Petitioner's disposable income. *Sec'y. Stat.*, ¶ 12.

DISCUSSION

The Secretary claims that Petitioner's debt is past due and legally enforceable and thus seeks authorization of his proposed repayment schedule for Petitioner. In support of his position, the Secretary produced a copy of the Note signed by Petitioner and a copy of the assignment to HUD, along with a copy of a sworn declaration from the Director of HUD's Asset Recovery Division in which the Director substantiates the debt amount owed by Petitioner. *See Sec'y. Stat.*, Ex. 1; *Sec'y. Stat.*, Ex. 3; *Dillon Decl.*, ¶ 6.

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that an administrative wage garnishment, in the amount proposed by the Secretary, would create a financial hardship for him. In support of his argument, Petitioner only submitted a copy of his Consumer Debtor Financial Statement but no other evidence to support his claim of hardship.

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). As a result, for this Court to mitigate the garnishment for reasons of financial hardship, Petitioner must show by a preponderance of the evidence that the proposed terms of debt repayment would create a financial hardship. Ray Jones, HUDAJF 84-1-OA (March 27, 1985); 31 C.F.R. § 285.11(k)(3); 31 C.F.R. § 285.11(f)(8)(ii). To adequately demonstrate financial hardship, documentary evidence must include proof of payment. Proof of payment should include cancelled checks or bills showing a record of payment, copies of pay statements, copies of utility and automobile expenses, mortgage payments, and any other documents showing payment of household expenses. Proof of total income for all wage-earners in the household should also be included. *Id.* See also Second Order to Show Cause. Petitioner has failed to produce documentary evidence that would sufficiently persuade the Court that the proposed repayment schedule would create a financial hardship for him.

Based on the record, the Court has determined that the Secretary has successfully met his burden of proof that the alleged debt is past due and legally enforceable against Petitioner. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, the Court finds Petitioner's claim fails for lack of proof.

As a final point, Rule 26.4(c) of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party*.

(Emphasis added).

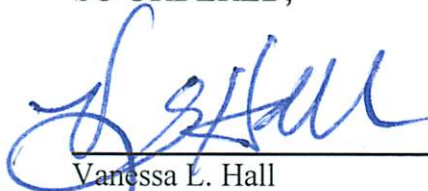
Accordingly, the Court finds that, pursuant to Rule 26.4(c) and consistent with the Court's previous *Orders*, Petitioner's non-compliance with the *Orders* issued by this Court warrants rendering a decision against Petitioner.

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 in an amount equal to 15% Petitioner's monthly disposable pay. It is

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.