

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

In the Matter of:

**Kisha Alexander,**

Petitioner.

17-VH-0049-AG-014

780787153

September 13, 2017

**DECISION AND ORDER**

On January 23, 2017, Kisha Alexander (“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”).

**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 pursuant to 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.*

**PROCEDURAL HISTORY**

Pursuant to 31 C.F.R. § 285.11(f) (4), on January 25, 2017, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On February 15, 2017, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file sufficient documentary evidence in support of her claim of financial hardship, or in response to the orders issued by this Court. This case is now ripe for review.

**BACKGROUND**

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, because 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 June 20, 2015, Petitioner executed and delivered a Note to Home Loan Investment Bank, F.S.B. in the amount of \$25,000.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (*Secretary's Statement* ("Sec'y. Stat.") ¶ 2, filed February 15, 2017; Ex. A, Note.) Contemporaneously, on August 16, 2016, in accordance with 24 C.F.R. § 201.54, the Note was assigned by Home Loan Investment Bank, F.S.B. to the United States of America. (*Sec'y. Stat.*, ¶ 3; Ex. B, Assignment.) The Secretary is the holder of the Note on behalf of the United States. Id.

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) \$24,667.17 as the unpaid principal balance as of February 6, 2017;
- (b) \$178.70 as the unpaid interest on the principal balance at 1% per annum through February 6, 2017;
- (c) \$1,144.52 as the unpaid penalties on the principal balance through February 7, 2017; and
- (d) interest on said principal balance from February 7, 2017 at 1% per annum until paid.

Id.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated October 31, 2016, was sent to Petitioner. (*Sec'y Stat.*, Ex. B, ¶ 5.) In accordance with 31 C.F.R. 258.11(e) (2) (ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under mutually agreeable terms. Id. at ¶ 6. Petitioner did not enter into a written repayment agreement nor has paid the debt in full in response to the Notice. Id.

Consequently, a Wage Garnishment Order was issued to Petitioner's employer. Id. at ¶ 7. Based on the issuance of the Wage Garnishment Order, HUD has received two payments totaling \$763.12. These payments have been credited to Petitioner's account, and are reflected in the outstanding balance as shown above. Id. The Secretary now proposes a \$250 semimonthly repayment schedule to accommodate Petitioner's request for a \$500 monthly repayment offer.

## DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that the proposed garnishment amount would create a financial hardship and submitted certain limited documentation as proof. *Petitioner's Hearing Request (Hrg. Req.)*, filed January 20, 2017.

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of 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." Ray J. Jones, HUDAJF 84-1-OA at 2 (March 27, 1985).

Petitioner herein submitted a *Debt Resolution Program Financial Statement* with her *Hearing Request*. But this evidence alone was insufficient and did not persuade the Court that the proposed repayment scheduled would create a financial hardship. As a result, additional evidence was needed to assist the Court in making this determination.

In a subsequent *Order* issued by the Court, Petitioner was ordered to submit additional documentation, and she was informed that, “documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment, where applicable.” (Emphasis in original) *See Order for Documentary Evidence*, dated March 15, 2017; *Order to Show Cause*, dated May 1, 2017. The Court outlined, with specificity, the types of documentary evidence that could be considered in reviewing Petitioner’s claim of financial hardship. Petitioner however did not produce the necessary documentation.

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)). In the absence of documentary evidence that supports Petitioner’s alleged income and expenses, the Court is unable to determine whether the proposed wage garnishment repayment schedule would create a financial hardship for Petitioner. Thus, the Court finds Petitioner’s financial hardship claim fails for lack of sufficient proof.

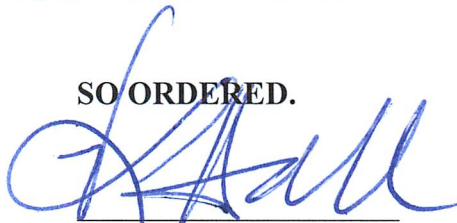
Without a record of evidence from the Petitioner that either refutes or rebuts what the Secretary has presented, the Court must also find that Petitioner remains contractually obligated to pay the alleged debt as so claimed by the Secretary.

### **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to the lesser of \$250 bi-monthly or 15% of Petitioner’s monthly disposable pay.

**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 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.