

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

In the Matter of:

Catalina Lopez,

Petitioner.

17-VH-0085-AG-025

72-1009722-0B

April 4, 2018

DECISION AND ORDER

On April 6, 2017, Catalina Lopez (“Petitioner”) filed a hearing request, along with limited documentary evidence, 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 April 6, 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 May 10, 2017, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner only filed limited documentary evidence along with her *Hearing Request* in support of her claim of financial hardship. *Petitioner’s Hearing Request (Hearing Request)*, filed April 6, 2017. 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.

In June 2014, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Sec'y. Stat.*, ¶ 2, Ex. A, Declaration of Brian Dillon¹ ("Dillon Declaration") at ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Id.*

In exchange for foreclosure relief, on June 16, 2014, Petitioner executed a Subordinate Note ("Note") in the amount of \$46,415.66 in favor of the Secretary. *Sec'y. Stat.*, ¶ 4, Ex. B. Note. Paragraph 3(A)(i) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. On or about April 1, 2016, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat.*, ¶ 2, Ex. A, *Dillon Declaration* at ¶ 4, Ex. B. Note, ¶ 3(A)(i) & (iii)).

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "U.S. Department of HUD c/o Deval LLC, Westpoint 1, Suite 1255 Corporate Drive, Suite 300, Irving, TX ... or any such other place as [HUD] may designate in writing by notice to Borrower." *Sec'y. Stat.*, ¶ 2, Ex. A, *Dillon Declaration* at ¶ 4, Ex. B. Note at ¶ 3(B).

Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. *Sec'y. Stat.*, ¶ 8, Ex. A, *Dillon Declaration* at ¶ 5. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$46,352.32 as the unpaid principal balance as of February 28, 2017;
- (b) \$77.22 as the unpaid interest on the principal balance at 1% per annum through March 30, 2017; and
- (c) Interest on said principal balance from April 1, 2017 at 1% per annum until paid.

Sec'y. Stat., ¶ 9, Ex. A, *Dillon Declaration* at ¶ 5.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated March 13, 2017 ("Notice") was sent to Petitioner. *Sec'y. Stat.*, ¶ 10, Ex. A, *Dillon Declaration* at ¶ 6.

In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioner has not entered into a written repayment agreement in response to the Notice. *Sec'y.*

¹ Brian Dillon is Director of Asset Recovery Division for the U.S. Housing and Urban Development.

Stat., ¶ 11, Ex. A, *Dillon Declaration* at ¶ 7.

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. *Hearing Request* filed April 6, 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 documentary evidence, along with proof of payment, of the following essential monthly household expenses: mortgage, \$1667.93; and utility bills for \$309.64, which included the total cost of electricity and water per month. *Hearing Request*, Attachments. Petitioner provided additional evidence of an alleged monthly expense from Frontier Communication for which credit will not be given because the Court could not determine from the documentation provided whether such expense was for cable, internet services, or otherwise. Thus, the Court deemed this expense non-essential. Based on the evidence submitted for essential expenses, Petitioner’s monthly household expenses totaled \$1977.57.

Petitioner’s payroll statement from her employer shows monthly gross earnings of \$1874.84 which averages \$937.42 bi-weekly, before deductions. *Hearing Request*, Attachments. After subtracting the monthly averages of allowable deductions for social security (FICA), federal taxes, and state taxes, Petitioner’s monthly disposable income is \$1,591.02.

The Secretary proposes a garnishment of 15% of Petitioner’s disposable income, which is “that 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....” 31 C.F.R. § 285.11(c). However, Petitioner’s essential household expenses of \$1,977.57 exceed her disposable pay of \$1,591.02 by \$386.55 monthly just based on the limited documentation presented by Petitioner. A 15% garnishment rate of Petitioner’s current monthly disposable income as proposed by the Secretary would equal approximately \$119.33 bi-weekly which would average per month an additional expense of \$238.66 and increase Petitioner’s monthly obligations to exceed her monthly income by \$625.21.

Petitioner has met her burden of proof that imposition of an administrative wage garnishment in the amount sought by the Secretary would cause severe financial hardship for Petitioner. This Court has the authority to order garnishment at a lesser rate based upon the record before it. *See* 31 C.F.R. § 285.11(k)(3). While the Secretary has successfully established that the debt that is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary, a garnishment amount at any percentage of Petitioner’s

disposable income would constitute a financial hardship sufficient to justify suspension of collection action, at least at this time.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain in place, indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment based on Petitioner's financial circumstances at this time.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment should, in the future, Petitioner's income increase, or her essential household expenses be reduced.

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.