

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

In the Matter of:

Cristino Santiago, Jr.,

Petitioner.

17-VH-0140-AG-031

780780737

April 4, 2018

DECISION AND ORDER

On July 21, 2017, Cristino Santiago, Jr. (“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 July 26, 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 September 11, 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 December 10, 2013, Cristino Santiago, Jr. ("Petitioner") and Jeanette Santiago executed and delivered to Home Loan Investment Bank, F.S.B., a Note (Secured ("Note")) in the amount of \$19,667.00. *Secretary's Statement*, (*Sec'y. Stat.*), ¶ 2, Ex. 1, Note.

The Note was insured against nonpayment by Secretary pursuant to Title I of the National Housing Act. *Sec'y. Stat.*, ¶ 2, Ex. 2, *Declaration of Brian Dillon*¹ ("*Dillon Declaration*") at ¶ 3. The Petitioner defaulted on the Note by failing to make payments as agreed in the Note. The Note was subsequently assigned to HUD under the regulations governing the Title I Insurance Program. *Sec'y. Stat.*, ¶ 4, Ex. 2, *Dillon Declaration*, ¶ 3, Ex. 3, Assignment to HUD.

HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$19,491.15 as the unpaid principal balance as of August 17, 2017;
- b. \$756.36 as the unpaid interest on the principal balance at 1 % per annum through August 17, 2017;
- c. \$111.76 as the unpaid administrative costs as of August 17, 2017; and
- d. interest on said principal balance from August 18, 2017 at 1 % per
- e. annum until paid.

Sec'y. Stat., ¶ 6, Ex. 2, *Dillon Declaration* at ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated January 26, 2017, was mailed to Petitioner's last known address. *Sec'y. Stat.*, ¶ 7, Ex. 2, *Dillon Declaration* at ¶ 5. 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. *Sec'y. Stat.*, ¶ 8, Ex. 2, *Dillon Declaration* at ¶ 6. However, to date, Petitioner has not entered into any such agreement.

Based upon the income information Petitioner provided, the Secretary proposes a repayment schedule of \$80.60 weekly, or an amount equal to 15% of Petitioner's disposable income. *Sec'y. Stat.*, ¶ 12, Ex. 2, *Dillon Declaration* at ¶ 9.

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 (Hearing. Req.)*, filed July 21, 2017. Petitioner more specifically states that "We cannot afford a 30% a week out of our pay (15% me) and (15% percent [sic] my wife) I think this is too much..."

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

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

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 his *Hearing Request*. But this evidence alone was insufficient and did not persuade the Court that the proposed repayment scheduled would create a financial hardship. The Debt Resolution Statement merely listed Petitioner’s expenses and income, with documentation to support the items listed. As a result, additional evidence was needed to assist the Court in making this determination.

In subsequent *Orders* issued by the Court, Petitioner was ordered to submit additional documentation to more sufficiently support his claim of financial hardship.” See Order for Documentary Evidence, dated October 30, 2017; *Order to Show Cause*, dated January 13, 2018. However, Petitioner did not respond to the Court’s *Orders* and 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.

As a final point, Petitioner states “we gonna have to come to an agreement a [sic] payment plan that we could afford[.] [L]et me know thru email or mail[.] [W]e have to take care of this matter as soon as possible.” While Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.

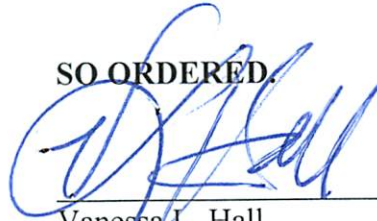
Petitioner may wish to discuss this matter with Counsel for the Secretary or Michael DeMarco, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

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 \$80.60 weekly, or an amount equal to 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.