

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

In the Matter of:

Brian Watson,

Petitioner.

17-VH-0142-AG-033

1600427144A

April 3, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (*Hearing Request*) filed on July 25, 2017, by Petitioner Brian Watson (“Petitioner”) 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”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

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.*

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f)(4), on July 25, 2017, 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*”) at 2. On September 25, 2017, the Secretary filed his *Statement* (*Sec’y. Stat.*) along with documentation in support of his position. In response to the *Secretary’s Statement*, Petitioner filed, on April 12, 2018, a *Statement* along with documentary evidence in support of his claim of financial hardship and also, on February 8, 2019, filed additional documentary evidence in response to the Court’s *Order for Clarification* issued on November 29, 2018. This case is now ripe for review.

FINDINGS OF FACT

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.

On or about September 5, 2014, Brian Watson ("Petitioner") executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$ 28, 544.31. *Secretary's Statement* (*Sec'y. Stat.*), ¶ 2, Ex. 2. HUD holds a valid claim against the Petitioner. *Sec'y. Stat.*, Ex. 1, *Declaration of Gary Sautter* (*Sautter Decl.*),¹ ¶ 3.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured first mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.*, ¶ 3; Ex. 1, *Sautter Decl.*, ¶ 4. By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (4)(A)[o]n October 1, 2044 or, if earlier, when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principal residence. *Sec'y. Stat.*, ¶ 4, Ex. 2.

On or about December 8, 2014, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full. *Sec'y. Stat.*, ¶ 5; Ex. 1, *Sautter Decl.*, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 6; Ex. 1, *Sautter Decl.* ¶ 6.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated February 28, 2017, was mailed to Petitioner at his last-known address. *Sec'y. Stat.*, ¶ 8, Ex.1, *Sautter Decl.*, ¶ 6.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$28,304.64 as the unpaid principal balance as of August 3, 2017;
- b. \$0.00 as the unpaid interest on the principal balance at 1 % per annum through August 3, 2017;
- c. interest on said principal balance from August 4, 2017 at 1 % per annum until paid.

Sec'y. Stat., ¶ 7; Ex. 1, *Sautter Decl.*, ¶ 5.

To date, seven wage garnishment payments have been transmitted to HUD pursuant to the U.S. Department of Treasury's April 3, 2017 Wage Garnishment Withholding Order, totaling \$2,916.82. Those payments are reflected in the amount claimed by HUD.

¹ Gary Sautter is the Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

Petitioner provided a copy of his biweekly pay statement for the pay period ending April 13, 2017. This pay statement indicates that Petitioner's gross pay totaled \$3,502.84; less allowable deductions of \$768.67 (Social Security \$215.87; Medicare \$50.48; Federal Withholding \$355.91; State Tax - MI \$125.39; Dental \$21.02) indicating a biweekly net disposable pay of \$2,734.17. Based on this pay statement, Administrative Wage Garnishment authorized at 15% of Petitioner's disposable pay would result in a biweekly repayment schedule under such garnishment order equal to \$410.13.

The Secretary's proposed repayment schedule is \$410.13 biweekly or 15% of Petitioner's disposable pay. *Sec'y. Stat.*, ¶ 14; Ex. 1, *Sautter Decl.*, ¶ 10.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that the proposed garnishment amount would cause a severe financial hardship. More specifically, Petitioner states:

I am currently paying and respectfully request a month garnishment amount of \$250. Due to a job loss in early 2016, I have struggled to find a job with a comparable income and now face a decrease of nearly \$1300 in monthly gross income. This reduction has placed a considerable strain and financial hardship on my family and I with paying prior debts, meeting tax obligations and covering the many daily living expenses in order to care for my family. I cannot ignore what I thought was a debt paid to **HUD** back in 2014 by my former Mortgager and title company, however, I understand repayment is necessary and expect to do so.

Hearing Request, Attachment.

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).

Herein, Petitioner offered into evidence with his *Hearing Request* a completed *Consumer Debtor Financial Statement* and documentary evidence in support of his claim of financial hardship. Petitioner's bi-weekly pay statement for the pay period ending April 12, 2018 indicated that his gross pay totals \$3530.77. *Hearing Request*, *Attachments*; *Petitioner's Documentary Evidence (Pet'r. April 12 Evid.)*, *Attachments*, filed April 12, 2018. Petitioner's disposable pay is determined 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). After deducting allowable deductions, Petitioner's remaining balance for his bi-weekly disposable pay is \$ 2679.32, and per month is \$5358.64. (*Id.*)

Petitioner offered additional documentary evidence, along with proofs of payment, to substantiate the following essential monthly expenses: mortgage, \$ 2804.83; water and sewage, \$190.00; gas and electric (combined), \$ 348.00; home/car insurance, \$ 250.00; cable/phone/satellite, \$ 310.00; automobile loan, \$ 914.00; gasoline/automobile, \$100.00; IRS tax payment, \$100.00; credit card payments, \$319.50; dental bill (uncovered by insurance), \$ 230.75; student loan, \$100.00; and, property taxes, \$598.68. *Pet'r. April 12 Evid., Attachments; Petitioner's February 2019 Documentary Evidence (Pet'r. Feb. 8 Evid.), Attachments*, filed February 8, 2019. Petitioner also submitted, as ordered by the Court, the necessary proof of employment termination alleged to have occurred in 2016 that subsequently affected his household income. Petitioner has since provided proof that he is currently employed.

Based on the evidence Petitioner offered for the Court's review, his essential monthly expenses total \$6165.76 per month. Petitioner's monthly disposable pay of \$5358.64, less his essential monthly expenses of \$6165.76, result in a negative balance of (-\$ 807.12). A 15% garnishment rate of Petitioner's current monthly disposable income would result in a garnishment amount of approximately \$ 803.79 per month and yield a negative balance of (-\$1610.91). A 10% garnishment rate would lower Petitioner's garnishment amount to approximately \$ 535.86 per month but still yield a negative balance of (-\$1342.98). A 5% garnishment rate of Petitioner's monthly disposable pay would equal \$267.93 and again would result in a negative balance at month's end in the amount of with a monthly disposable income of (-\$1075.05). Imposition of the proposed garnishment amount would contribute even further to Petitioner's state of financial hardship, especially considering the fact that the listed expenses exclude other expenses of necessity such as food and clothing.

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, the Court has determined that Petitioner has successfully met his burden of proof that the proposed garnishment amount claimed by the Secretary would cause a severe financial hardship. A garnishment amount at any percentage of Petitioner's disposable income would, at this time, constitute a financial hardship sufficient enough to forego further collection.

ORDER

Based on the foregoing, the Court finds that an administrative wage garnishment would cause severe financial hardship for the Petitioner. Therefore, it is hereby

ORDERED that the Secretary is not authorized to seek further collection of this outstanding obligation by means of administrative wage garnishment due to Petitioner's financial circumstances at this time. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is VACATED.

The Secretary shall not be prejudiced from seeking an administrative wage garnishment if, in the future, Petitioner's income increases or his expenses for necessities are reduced.

SO ORDERED.

A handwritten signature in blue ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this 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.