

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

In the Matter of:

Regina A. Hertenstein,

Petitioner.

17-VH-0146-AG-036

780789928

March 5, 2018

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed on August 1, 2017, by Petitioner Regina A. Hertenstein (“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”).

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 August 2, 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 1, 2017, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of his position. Petitioner filed, along with her Hearing Request, a brief written statement alleging financial hardship, without supporting documentation. To date, Petitioner has failed to comply with the Court’s orders. This case is now ripe for review.

BACKGROUND

This debt resulted 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. Consequently, 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 February 18, 2014, Regina A. Hertenstein ("Petitioner") executed and delivered to Admirals Bank, a Title I Note—Secured Step Down ("Note") in the amount of \$25,000.00. The Note secured a subordinate mortgage held by the Secretary and was insured against nonpayment default by the Secretary pursuant to Title I of the National Housing Act. *Sec'y. Stat.*, Ex. 1, Note; Ex. 2, *Sautter Declaration*, ¶2, 3. The Note then was assigned to Admirals Bank f/k/a Domestic Bank, and thereafter to HUD. *Sec'y. Stat.*, Ex. 3.

Petitioner defaulted on the Note by failing to make payments as agreed. The Note was subsequently assigned to HUD by Admirals Bank f/k/a Domestic Bank, under the regulations governing the Title I Insurance Program. *Sec'y. Stat.*, Ex. 1, ¶ 5; Ex. 2, ¶ 3.

HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, Ex. 2, ¶ 4.

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

- a. \$22,491.50 as the unpaid principal balance as of July 30, 2017;
- b. \$549.79 as the unpaid interest on the principal balance at 1% per annum through July 30, 2017;
- c. \$1,415.56 as unpaid penalties and administrative costs through July 30, 2016; and
- d. interest on said principal balance from August 1, 2017 at 1% per annum until paid Exhibit 2, ¶ 4.

Sec'y. Stat. ¶ 6; *Sautter Decl.*, ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 10, 2017, was sent to Petitioner by the U. S. Department of the Treasury, Bureau of Fiscal Services, Debt Management Services. *Sec'y. Stat.*, Ex. 2, ¶ 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 under terms agreeable to HUD. The July 10, 2017 letter sent to Petitioner by Treasury satisfied that requirement.

Petitioner provided a copy of her bi-weekly pay statement and a completed Debt Resolution Program Financial Statement. *Sec'y. Stat.*, Ex. 3, Attachments. Based on the information provided by the Petitioner, the Secretary claims that Petitioner has not met her burden of proof that the administrative wage garnishment authorized at 15% of the Petitioner's disposable income would create a financial hardship. *Sec'y. Stat.*, ¶ 5.

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. Petitioner identified certain health challenges and financial burdens currently faced by Petitioner that Petitioner states could potentially limit her ability to pay the subject debt. If the proposed repayment plan is authorized, Petitioner further claims that it would result in further financial hardship for her. *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 only submitted a copy of a completed *Debt Resolution Program Financial Statement* with her *Hearing Request* that only listed her monthly obligations without further documentation as proof of payments. This evidence, alone, is not sufficiently and fails to persuade the Court that the proposed repayment scheduled would create a financial hardship for Petitioner. Additional evidence was needed to assist the Court in determining Petitioner’s financial hardship. On September 19, 2017 and December 4, 2017, the Court issued orders to Petitioner identifying, with specificity, documentary evidence Petitioner needed to file for Petitioner to more sufficiently demonstrate her financial state. Petitioner was notified in both 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.” Petitioner, however, failed to comply with any of the Orders issued by the Court.

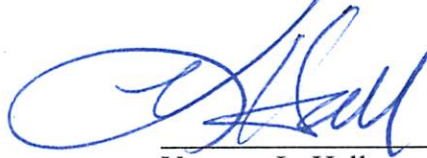
This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). In the absence of documentary evidence that supports Petitioner’s alleged income, expenses, and potential financial hardship, the Court is unable to determine whether Petitioner’s claim of financial hardship is credible. Without a record of evidence from Petitioner that either refutes or rebuts what has been presented by the Secretary, the Court finds that Petitioner’s claim fails for lack of proof and, consequently, Petitioner remains contractually obligated to pay the debt 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 the amount of \$732.20 per bi-weekly pay period, or an amount equal to 15% of Petitioner's monthly disposable income.

SO ORDERED.



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