

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

In the Matter of:

Thalia Kelly,

Petitioner.

17-VH-0161-AG-043

721010006

November 16, 2018

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed on August 21, 2017, by Petitioner Thalia Kelly ("Petitioner") concerning the existence, amount, or enforceability of the payment schedule of the 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 21, 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 August 30, 2017, the Secretary filed his *Statement (Sec'y. Stat.)* along with documentation in support of his position. Petitioner filed documentary evidence, along with her *Hearing Request*, alleging financial hardship, on August 21, 2018, and later on October 30, 2017. 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.

In this case, Petitioner allegedly executed and delivered the Subordinate Note (“Note”) to the Secretary in exchange for foreclosure relief from HUD. The Note was executed and delivered on August 3, 2015 in the amount of \$88,866.35. *Sec’y Stat.*, ¶4. The Note lists specific events which render the subject debt due and payable, one of which is the payment in full of the primary note, which was insured against default by the Secretary. *Sec’y Stat.*, ¶ 4. On August 12, 2016 the FHA insurance on the primary note was terminated, as the lender indicated the primary note and mortgage was paid in full. *Sec’y Stat.*, ¶¶5-6.

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

- a. \$88,886.35 as the unpaid principal balance as of July 30, 2017;
- b. \$370.00 as the unpaid interest on the principal balance at 1% per annum through July 30, 2017;
- c. \$ 5,386.28 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.

Sec’y. Stat. ¶ 9; Ex. 2, *Porter Decl.*, ¶ 5.

Pursuant to 31 C.F.R §285.11 (e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated July 27, 2017 was mailed to Petitioner at his last known address. *Sec’y Stat.* ¶¶ 10-11. HUD obtained Petitioner’s income statement, and so the Secretary is proposing a debt repayment schedule of \$187.37 bi-weekly or ten (10) percent of Petitioner’s disposable income per pay period. *Sec’y Stat.*, ¶ 13.

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 states, “I am not disputing the debt, but I simply cannot afford to pay the proposed amount of \$187.37 bi-weekly.” She further states “I am asking to please reconsider the garnishment. Currently when I pay my bills, I really have no money left. The garnishment would put me in an unbelievable financial hardship.” *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). As support, Petitioner introduced into evidence copies of a completed *Debt Resolution Program Financial Statement* in which she

listed her alleged expenses; her pay statement from her employer, Essity, for June 16, 2017 through June 28, 2017; bill statements from her creditors; and, her tax returns from year 2016.

While financial hardship does not invalidate a debt or release a debtor from the obligation to pay, it is relevant to the amount of administrative garnishment that will be allowed. See Raymond Kovalski, HUDBCA No. 87-1681-G18 (December 8, 1986); 31 C.F.R. §§ 285.11(f)(2) and (k)(3). Here, Petitioner's disposable income for purposes of administrative wage garnishment is defined as that part of Petitioner's compensation that remains after the deduction of health insurance premiums and any amounts required by law to be withheld. Such deductions include social security taxes and withholding taxes, but not amounts withheld pursuant to court order. See 31 C.F.R. § 285.11 (c).

Herein, Petitioner receives \$2,511.00 in gross income bi-weekly, before factoring in her deductions required by law that total \$490.13 for Federal, State and local Tax, Social Security, and medical insurance. Thus, after deductions, Petitioner's disposable income bi-weekly is \$2,020.87, or monthly, at \$4,041.74.

Petitioner has produced sufficient evidence for the Court to determine whether the Secretary's proposed garnishment amount would cause financial hardship. Petitioner's essential monthly expenses include rent, \$2,100.00; child care, \$299.00; phone and electric bills, \$182.00; car insurance, \$128.00; food, \$345; gas bill, 100.00. So, her monthly household expenses total \$3154.00. Other expenses such as credit card bills, \$75.00, and cable, at \$140.00 were not included in the calculation of Petitioner's household expenses because they were considered non-essentials. Petitioner's *Debt Resolution Form* also lists, as assets, an Audi A4 2007 vehicle and a checking account valued at \$1,000.00.

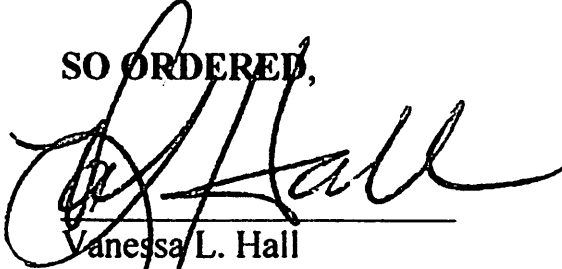
Petitioner's monthly disposable income of \$4041.74, less total monthly essential household expenses of \$3154.00, yields a positive balance of \$887.74 per month. At a 10% garnishment rate, Petitioner's monthly garnishment amount would actually be \$404.17, and bi-weekly would be \$202.08. After deducting the monthly garnishment amount calculated based on Petitioner's evidence, Petitioner would continue to have a positive balance of \$483.57 to cover non-essential miscellaneous expenses on a monthly basis. However, based on the evidence presented by the Secretary, the proposed repayment schedule is even less, at \$187.37, and would increase Petitioner's positive monthly balance to \$513.00 to cover non-essential miscellaneous expenses. Therefore, the Court finds that the evidence does not support Petitioner's allegation that the proposed bi-weekly garnishment amount at the rate of 10% would create a financial hardship.

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 \$187.37 per bi-weekly pay period, or an amount equal to 10% 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 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.