

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

In the Matter of:

Nichole Foxworthy,

Petitioner.

17-VH-0170-AG-051

780734494

April 4, 2018

DECISION AND ORDER

On August 22, 2017, Nichole Foxworthy (“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 August 23, 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 20, 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 May 24, 2010, Petitioner executed and delivered to Domestic Bank a Note in the amount of \$20,769.00, which was insured against nonpayment by the Secretary, pursuant to

Title I of the National Housing Act, 12 U.S.C. § 1703. Secretary's Statement, (*Sec'y. Stat.*), ¶ 2, Ex. A, Note.

Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, Admirals Bank f/k/a Domestic Bank assigned the Note to the United States of America on April 20, 2011. The Secretary is the holder of the Note on behalf of the United States of America. *Sec'y. Stat.*, ¶ 3, Ex. B, Assignment to HUD. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. As a result, Petitioner remains in default on the Note.

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

- (a) \$20,275.35 as the unpaid principal balance as of October 31, 2017;
- (b) \$1,740.89 as the unpaid interest on the principal balance at 1% per annum through October 31, 2017;
- (c) \$6,446.79 as the unpaid penalties and administrative costs as of August 31, 2017; and,
- (d) interest on said principal balance from November 1, 2017 at 1% per annum until paid.

Sec'y. Stat., ¶ 4, Ex. C, *Declaration of Gary Sautter*¹ ("*Sautter Declaration*") at ¶ 4.

Pursuant to 31 C.F.R. § 285.11(e), a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") dated July 10, 2017 was sent to Petitioner. *Sec'y. Stat.*, ¶ 6, Ex. C, *Sautter 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 under mutually agreeable terms. Petitioner did not enter into a written repayment agreement or pay the debt in full based on the Notice. *Sec'y. Stat.*, ¶ 11, Ex. A, *Sautter Declaration* at ¶ 6.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner identifies on her *Hearing Request* that the proposed garnishment amount would create a financial hardship and submitted certain limited documentation as proof. *Petitioner's Hearing Request (Hearing. Req.)*, filed August 22, 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

¹ Gary Sautter is Acting Director of Asset Recovery Division for the U.S. Housing and Urban Development.

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 only submitted her *Hearing Request*, without introducing any documentary evidence in support of her position. 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 the documentation needed for the Court to decide, and Petitioner was informed that, “documentary evidence should not be limited to a mere list of expenses, but instead must include proof of payment, where applicable.” (Emphasis in original). See Notice of Docketing, dated August 23, 2017; Order to Show Cause, dated January 31, 2018. The Court outlined, with specificity, the types of documentary evidence that could be considered in reviewing Petitioner’s claim. Petitioner however did not 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 position, 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.

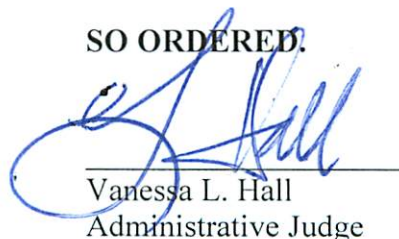
Without a record of evidence from the Petitioner that either refutes or rebuts what the Secretary has presented, the Court must also find that Petitioner remains contractually obligated to pay the alleged debt so claimed by the Secretary.

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 an amount equal to the lesser of \$790.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 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.