

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

In the Matter of:

**Thomas and Laurie Gunderson,**

Petitioners.

18-AM-0026-AG-016

721010910

May 23, 2019

**DECISION AND ORDER**

On about October 25, 2017, Thomas and Laurie Gunderson (“Petitioners ”) filed a *Hearing Request* concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This case 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. On November 2, 2017, the Court issued a Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”) that stayed the issuance of a wage garnishment order until the issuance of this *Decision and Order*. (See 31 C.F.R. § 285.11(f)(4).)

**BACKGROUND**

In or around August 2016, the HUD-insured primary mortgage on Petitioners' home was in default, and Petitioners were threatened with foreclosure. *Secretary's Statement* (“Secy. Stat.”) ¶ 2, (Declaration of Brian Dillon, Director, HUD Asset Recovery Division, Exhibit A (“Dillon Decl.”).) To prevent the lender from foreclosing, HUD advanced funds to Petitioners' lender to bring the primary note current. Dillon Decl., at 4.

As evidence of this foreclosure relief, Petitioners executed a Subordinate Note (“Note”) on August 29, 2016, in the amount of \$59,027.51 made payable to the Secretary. *Secy. Stat.*, Exhibit B).

Paragraph 4(A) of the Note cites specific events that cause the debt to become due and payable upon occurrence. One of those events is the payment in full of the primary note. (Note, ¶ 4(A)(i)). On or about February 15, 2017, the FHA insurance on Petitioners' primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. (Dillon Declaration at I 4; Note at II 4(A)(i) 85 (iii)) Upon payment in full of the primary note, Petitioner became obligated to make payment to HUD on the Note at the "Office of Housing FHA-Comptroller, Director of Mortgage Insurance accounting and Servicing 451 Seventh Street SW Washington DC 20410 or any such other place as [HUD] may designate in writing by notice to Borrower." (Note, ¶ 4(B)).

Petitioners failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioners' debt to HUD is delinquent. (Dillon Decl., at 5). The Secretary has made efforts to collect this debt from Petitioners, but has been unsuccessful.

The Secretary maintains that Petitioners owe the following amounts to HUD:

- a) \$59,027.51 as the unpaid principal balance as of October 31, 2017;
- b) \$245.85 as the unpaid interest on the principal balance at 1% per annum through October 31, 2017;
- c) \$3,588.78 as the unpaid penalties and administrative costs as of October 31, 2017; and
- d) Interest on said principal balance from November 1, 2017 at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding dated October 19, 2017 ("Notice") was sent to Petitioners. (Dillon Decl., ¶ 6). Petitioners were also afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioners have not entered into a written repayment agreement in response to the Notice. (*Id.* ¶ 7). The Department states that it attempted to obtain financial documentation from Petitioners, including recent pay statements, in order to substantiate their claim of financial hardship. To date, the requested documentation has not been provided. (*Id.* ¶ 8). Therefore, HUD's proposed repayment schedule is \$1,746.17 per month, which will liquidate the debt in three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioners' disposable pay. (*Id.* ¶ 9).

### **DISCUSSION**

Petitioners do not contest the debt or amounts claimed by the Secretary in this case. *See Petitioner's Request for Hearing*, dated October 25, 2017; *Petitioner's Documentary Evidence*, dated January 30, 2018 ("*Pet's Doc. Evid.*"); *Petitioner's Email*, dated March 12, 2018 ("*Pet's Email*").

Accordingly, the Court finds that Petitioners are indebted to the Department in the amounts claimed by the Secretary.

Instead, Petitioners claim that repayment of the debt at this time would cause them undue financial hardship. *Pet's. Email*. Petitioners state that "Thomas was out of work in 2017 for six months [but] is now working for WAWA mak[ing] 10.50\$ per hour working less than 30 hours per week. Thomas will probably make approx.. 16,000\$ and Laurie will make approx.. \$26,000 in 2018.[sic]" Petitioners combined annual income taken from *Pe's Doc*. Evid, Settlement Offer, is \$44,876.00. This amounts to a monthly gross income of \$3,740.00. In the absence of a detailed accounting, it is the policy of this Office to allot a 15% deduction from gross monthly income for taxes, social security, health insurance, and other mandatory payroll deductions. If Petitioners seek additional credit for payroll deductions, it is their obligation to come forward with a detailed accounting of those deductions. Therefore, the amount of \$6,731 is deducted from the \$4,4876 figure, providing a net monthly income of **\$3,179.00**.

Before setting forth Petitioners' monthly household expense figures, the Court notes that Petitioners have claimed expenses for multiple vehicles, time-share properties, cable tv, extra cell phones, and credit card expenses for dining out and other expenses that do not qualify as necessary household expenses. Those claims are, therefore, excluded from the calculation of Petitioners' necessary, monthly, household expenses. The following expenses are being taken into consideration:

1. RENT	0
2. FOOD	300
3. ELECTRIC	150
4. GAS	200
5. TELEPHONE	100
6. WATER/SEWER	60
7. FURNITURE	100
8. ALLY FINANCIAL	380
9. ALLY FINANCIAL	530
10. LIFE INSURANCE	220
11. PROPERTY TAX	110
12. MEDICAL BILLS	100

TOTAL	<hr/> \$ 2,250
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The Court therefore finds that a wage garnishment of 15% of Petitioner's net disposable monthly income of \$3,179.00, at this time, would not create undue financial hardship for Petitioners. That amount is

approximately \$477.00. The \$929.00 difference between Petitioners' disposable monthly income and allowed monthly expenses will accommodate the Department's proposed repayment plan for 15% of Petitioners' disposable monthly income. Accordingly, it

**ORDER**

For the reasons set forth above, it is

**ORDERED** that judgment is entered in favor the Secretary, and the Secretary is authorized to seek garnishment of Petitioners' wages at the rate of 15% for each pay period, or at the maximum amount allowed by law, whichever is higher. It is

**FURTHER ORDERED** that the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment that was issued on November 2, 2017 is hereby **VACATED**.

**SO ORDERED.**



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H. Alexander Manuel  
Administrative Judge

**APPEAL NOTICE:** You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a showing of new evidence that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishment cases, *See* 24 C.F.R. §17.81, 31 C.F.R. §285.11(f), and 5 U.S.C. 701, *et seq.* For administrative offset cases, *See* 24 C.F.R. §17.73(a), and 5 U.S.C. §701, *et seq.*