

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

In the Matter of:

Frank Orlando,

Petitioner.

18-VH-0055-AG-033

7-21010579

June 13, 2019

DECISION AND ORDER

Petitioner Frank Orlando (“Petitioner”), signed a *Request for Hearing* (“*Hearing Request*”) dated November 15, 2017, regarding 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 the Office of Hearings and Appeals 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 initially has the burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Subsequently, Petitioner must establish by a preponderance of the evidence that no debt exists or that the amount claimed by the Secretary is incorrect. 31 C.F.R. § 285.11 (f)(8)(ii). Petitioner may also offer 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

On November 15, 2017, Petitioner submitted a brief written *Statement* (“*Pet’r’s Stat.*”) alleging financial hardship along with his *Hearing Request*. This Court on November 17, 2017, 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*”) at 2. On December 12, 2017, the Secretary filed his *Statement* (“*Sec’y. Stat.*”), along with documentation to support his position. In response, on December 27, 2017, Petitioner filed documentary evidence in support of his claim for financial hardship. *Petitioner’s Statement II (Pet’r’s Stat. II), Attachments*. This case is now ripe for review.

FINDINGS OF FACT

This debt arose from a defaulted loan insured against non-payment by the Secretary.

In or about November 2012, Petitioner faced possible foreclosure of the HUD-insured primary mortgage on his home. *Sec'y. Stat.*, ¶ 2; Ex. A, Declaration of Brian Dillon, (“*Dillon Decl.*”), Acting Director of Asset Recovery Division, HUD Financial Operations Center, ¶ 4. After HUD advanced funds to the FHA-insured lender to provide foreclosure relief, Petitioner executed a subordinate note (“Note”) in the amount of \$53,421.83 in favor of the Secretary. *Sec'y. Stat.*, Ex. B., Note, dated November 6, 2012.

The Note states that the principal balance becomes due at maturity or earlier if certain conditions occur. *Sec'y. Stat.*, Ex. B., ¶ 4(A). One of these conditions is the borrower’s payment in full of the primary note. *Sec'y. Stat.*, Ex. B., ¶ 4(A)(i). On or about November 29, 2016, Petitioner’s primary lender notified the Secretary that the primary note was paid in full, rendering the Note due and payable. *Sec'y. Stat.* ¶ 6; Ex. A, *Dillon Decl.* ¶ 4; Ex. B., Note ¶¶ 4(A)(i)-(iii). The Secretary has unsuccessfully attempted to collect this debt and therefore alleges that Petitioner is indebted to HUD for the following amounts:

- a) \$53,421.83 as the unpaid principal balance as of November 30, 2017;
- b) \$356.00 as the unpaid interest on the principal balance at 1% per annum through November 30, 2017;
- c) \$3,215.99 as the unpaid penalties through November 30, 2017;
- d) \$35.33 as the unpaid administrative costs through November 30, 2017; and
- e) interest on said principal balance from December 1, 2017, at 1% per annum until paid.

Sec'y. Stat., ¶ 9; Ex. A, *Dillon Decl.*, ¶ 5.

The Department of the Treasury sent a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice”) to Petitioner dated October 12, 2017. *Sec'y. Stat.*, Ex. A., *Dillon Decl.*, ¶ 6. In accordance with 31 C.F.R. 285.11(e)(2)(ii), the Notice indicated Petitioner’s opportunity to avoid wage garnishment by entering an acceptable written repayment plan before November 11, 2017, but Petitioner failed to do so. *Sec'y. Stat.*, Ex. A., *Dillon Decl.*, ¶ 7. Petitioner presented a *Consumer Debtor Financial Statement* signed on November 1, 2017, claiming monthly credit card payments totaling \$664, as well as additional monthly expenses of \$4,368. *Sec'y. Stat.*, Ex. A., *Dillon Decl.*, ¶ 8. Petitioner also provided a biweekly pay statement for the period ending October 1, 2017, indicating an annual net pay of \$35,082.52, and an average monthly take home pay of approximately \$3,900. *Id.*

The pay statement also indicated Petitioner’s gross pay of \$2,092.00 for the two-week period ending on October 1, 2017. *Sec'y. Stat.*, Ex. A., *Dillon Decl.*, ¶ 8. Allowable deductions totaling \$597.68 (Social Security, \$114.38; Medicare, \$26.75; Federal Withholding, \$26.60; State Tax – NY, \$87.63; Dental, \$29.67; Medical, \$217.67; and, Pension Loans, \$94.98) evince a net disposable income of \$1,494.32. *Sec'y. Stat.*, Ex. A., *Dillon Decl.* ¶ 9. Thus, the Secretary proposes a repayment schedule in the amount of \$224.15 biweekly or 15% of Petitioner’s disposable pay. *Id.*

On December 27, 2017, Petitioner submitted, as documentary evidence, a pay statement for the period ending December 10, 2017. His pay statement indicated that Petitioner had changed the amount of the federal withholdings on his income to the degree that it resulted in a decrease in his disposable income. *Pet'r's. Stat. II, Attachments*. The pay statement also reflected allowable deductions totaling \$737.32 (Social Security, \$114.39; Medicare, \$26.75; Federal

Withholding, \$167.60; State Tax – NY, \$86.26; Dental & Medical, \$247.34; and, Pension Loans, \$94.98), that left as disposable income a balance of \$1,354.68. *Id.*

The Secretary's proposed repayment schedule remains at 15% of Petitioner's disposable pay. *Sec'y Stat., Ex. A., Dillon Decl.* ¶ 9.

DISCUSSION

Petitioner does not contest the existence or the amount of debt, but instead Petitioner claims that imposing an administrative wage garnishment would cause undue financial hardship. As support, Petitioner offers into evidence pay statements that substantiate his income for the pay periods ending November 26, 2017, and December 10, 2017 respectively. Petitioner as well provided a list of monthly expenses along with proofs of payment as support of his alleged expenses. *Pet'r's Stat. II, Attachments.*

In garnishment cases, a showing of financial hardship does not invalidate a debt or release a debtor from the obligation to pay; however, it is relevant to determining the amount of administrative wage garnishment that will be permitted. *See Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986); *See* 31 C.F.R. §§ 285.11(f)(2) and (k)(3). Hence in this case, Petitioner's disposable income for determining administrative wage garnishment should equal the balance that remains of Petitioner's compensation after deducting the amounts withheld as required by law, such as social security taxes, withholding taxes, and health insurance premiums. *See* 31 C.F.R. § 285.11(c).

Petitioner has presented evidence of his financial hardship for the Court's review. Petitioner's essential monthly expenses include: mortgage, \$2650.74; natural gas, \$63.00; water, \$70.37; auto loans, \$867.71; electric, \$102; gasoline, \$200; groceries, \$250; baby formula, \$237; and, clothing for his baby, \$75. Petitioner's total for essential monthly expenses is \$4,515.82. The cable television at \$80 per month was excluded as non-essential from the Court's calculations. Further, two hospital bills totaling \$1,323.74, and delinquent taxes totaling \$1,343 were excluded because they are not recurring payments.

Based on the pay statements submitted by Petitioner for periods ending November 26 and December 10, 2017, Petitioner receives \$2,092 biweekly as gross income before allowable deductions of \$737.32 for Social Security, Medicare, Federal Income Tax, State Tax, Insurance, and Pension Loans. After deductions, Petitioner's biweekly disposable income is \$1,354.68. So, Petitioner's monthly disposable income is \$2,709.36. Petitioner's monthly expenses of \$4,515.82, alone, would exceed Petitioner's disposable income by (-\$1,806.46). A 15% garnishment rate of Petitioner's current monthly disposable income would equal approximately \$406.40 per month, or \$203.20 per paycheck. A 10% garnishment rate would lower the Petitioner's garnishment amount to approximately \$135.45 per month, or \$67.73 biweekly, and at 5%, would lower Petitioner's payments to approximately \$67.73 per month, or \$33.86 biweekly.

To impose an administrative garnishment against Petitioner would in fact create a financial hardship. The additional garnishment amount beyond his regular monthly expenses would increase the Petitioner's monthly expenses to a monthly figure that would far exceed his income, and result in a negative balance every month to maintain his household.

While the Secretary has successfully established the legal enforceability of the subject debt in the amount claimed by the Secretary, I find that Petitioner has proven, by a preponderance of the evidence, that the proposed garnishment amount or garnishment at any percentage rate would constitute a financial hardship for Petitioner. As a result, the Court finds that the evidence in support of Petitioner's hardship claim is sufficient enough to forego collection at this time.

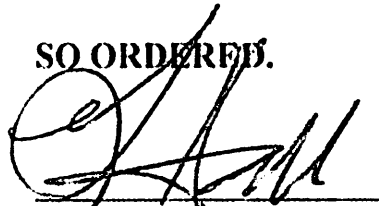
ORDER

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 shall remain in place indefinitely. Therefore, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment because of Petitioner's financial circumstances at this time.

However, 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 black ink, appearing to read 'Vanessa L. 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.