

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

In the Matter of:

Shirley B. Brown,

Petitioner.

18-VH-0110-AG-055

721008915

October 25, 2019

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request") along with documentary evidence filed by Shirley B. Brown ("Petitioner,"), on, 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 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 February 5, 2018, 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 February 20, 2018, the Secretary filed his *Statement* along with documentation in support of his position. Petitioner filed, on February 28, 2018, her *Response* and documentary evidence as support for her claim of financial hardship. This case is now ripe for review.

FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

On or about January 2013, Shirley B. Brown ("Petitioner"), the HUD-insured primary

mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement, Ex. A, Declaration of Brian Dillon*¹ (*Dillon Decl.*), ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Id.* In exchange for foreclosure relief, on January 26, 2013, Petitioner executed a Subordinate Note ("Note") in the amount of \$7,166.83 in favor of the Secretary. *Secretary's Statement, Ex. B, Note.*

Paragraph 4(A) of the Notes cite specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Secretary's Stat.* ¶ 5, Ex. B, Notes. On or about December 22, 2015, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Secretary's Stat.* ¶ 6, Ex. B, Note, ¶ 4(A)(i) & (iii); Ex. A, *Dillon Decl.* at ¶ 4.

Upon payment in full of the primary note, Petitioner was 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."** [emphasis in original]. *Secretary's Stat.* ¶ 7, Ex. B, Note, ¶ 4(B). Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. *Secretary's Stat.* ¶ 8, Ex. A, *Dillon Decl.* at ¶ 5.

The Secretary has made efforts to collect the debt amounts due under the Notes but has been unsuccessful. *Secretary's Statement, Ex. A, Dillon Decl.*, ¶ 4-5.

A Notice of Intent to Initiate Administrative Wage Garnishment dated September 1, 2017 was mailed to Petitioner. *Secretary's Statement, Ex. A, Dillon Decl.*, ¶ 4-5. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$7,166.83 as the unpaid principal balance as of February 6, 2018;
- (b) \$95.52 as the unpaid interest on the principal balance at 1% per annum through February 6, 2018;
- (c) \$614.68 as the unpaid penalties and administrative costs as of February 6, 2018; and
- (d) Interest on said principal balance from February 7, 2018 at 1% per annum until paid.

Secretary's Statement, Ex. A, Dillon Decl., ¶ 4-5.

The Secretary proposes a debt repayment schedule of \$863.72 per month, or an amount equal to 15% of Petitioner's disposable income. *Secretary's Stat.*, ¶ 19, Ex. A, ¶ 9.

¹ Brian Dillon is the Director of Asset Recovery Division for the U.S. Housing and Urban Development.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Petitioner instead claims that the proposed garnishment amount would create a financial hardship for her. 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. Herein, Petitioner states "I'm requesting for the garnishment to be ended[.] I am a single mother that lives on a very fixed income with the monies that I currently received for my family and myself. *Hearing Request* filed February 5, 2018. As support, Petitioner offered into evidence copies of a completed *Consumer Financial Statement*, her most recent payment statements, and proofs of payment for essential monthly expenses. *Id.*, Attachments; *Petitioner's Documentary Evidence (Pet'r's Doc. Evid.)* filed February 20, 2018.

Petitioner's disposable pay is determined after the deduction of health insurance premiums and any amounts required by law to be withheld . . . [including] amounts for deductions such as social security taxes and withholding taxes. 31 C.F.R. § 285.11(c). Petitioner's monthly disposable pay, after allowable deductions, is \$ 2099.16. *Id.* 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).

Petitioner offered for review proofs of payment to substantiate the following essential monthly expenses: water, \$58.00; electricity, \$ 391.19; auto insurance, \$125.00; phone, \$90.00; automobile loan, \$ 378.00; medical expenses (out-of-pocket), \$150.00; food, \$300.00; trash, \$37.00; and, cable/internet \$44.00.

Based on the evidence presented, Petitioner's essential monthly expenses total \$1573.19. Petitioner's monthly disposable pay of \$2099.16, less her total monthly expenses of \$1573.19, results in a positive balance of \$525.97. A 15% garnishment rate of Petitioner's monthly disposable income of \$2099.16 would yield a monthly garnishment amount of \$ 314.87. A deduction of \$ 314.87 from Petitioner's monthly balance of \$525.97 would result in a positive balance of \$211.10. But, an 8% garnishment rate of Petitioner's monthly disposable income of \$2099.16 would result in an estimated monthly payment of \$168.00 per month. Petitioner's monthly balance of \$525.97, less \$168.00, would yield a positive balance of \$357.97, an amount the Court deems sufficient to cover, at month's end, expenses that would otherwise be considered non-essential. Therefore, the Court finds that the proposed garnishment amount at 15% would in fact create a financial hardship for Petitioner as so claimed.

Section 285.11 (k)(3) states, "If a financial hardship is found, the agency shall downwardly adjust, by an amount and for a period of time agreeable to the agency, the amount garnished to reflect the debtor's financial condition. The agency will notify the employer of any adjustments to the amounts to be withheld." While the Secretary seeks authorization of a repayment schedule to recover the subject debt at 15% of Petitioner's disposable income, the Court finds that such proposal would cause financial hardship for Petitioner. The Secretary produced a copy of the Note in which Petitioner promised that all amounts due under the Notes shall become immediately due... "(2) if I breach any promise in this Note or in the Contract." *Secretary's Stat., Ex. B, ADDITIONAL TERMS*. Such has occurred in this case and as promised Petitioner must comply with the terms of the agreement.

However, because Petitioner has successfully met her burden of proof that she would suffer financial hardship if the proposed garnishment amount at 15% was authorized, the Court finds that a downward adjustment of the proposed garnishment amount to 8% would be appropriate in this case.

ORDER

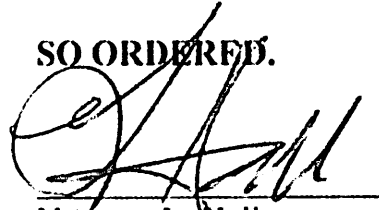
Based on the foregoing, I find that the debt is legally enforceable against Petitioner in the amount claimed by the Secretary. However, it is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 8% of Petitioner's monthly disposable income.

The Secretary shall not be prejudiced from seeking administrative wage garnishment in a greater amount if, in the future, Petitioner's income increases or her expenses for necessities are reduced.

The Order imposing the stay of referral of this matter on February 5, 2018 to the U.S. Department of the Treasury for administrative wage garnishment is VACATED.

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 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.