

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

In the Matter of:

Lisa Richardson,

Petitioner.

18-VH-0174-AG-087

721009169

August 13, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon Petitioner, Lisa Richardson, filing on May 4, 2018 a *Request for Hearing (Hearing Request)*, along with documentary evidence, 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”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

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 May 9, 2018, 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 July 16, 2018, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of his position. As already noted, Petitioner filed documentary evidence along with her *Hearing*

Request as support for her claim of financial hardship, but later filed a *Statement* on August 9, 2018. 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 3720A, because of a defaulted loan that was insured against non-payment by the Secretary.

On or about March 4, 2014, Lisa Richardson a/k/a Lisa A. Richardson ("Petitioner") executed and delivered to the Secretary a Subordinate Note ("Note") dated February 6, 2014, in the amount of \$ 11,625.62.

Secretary's Statement (*Sec'y. Stat.*), ¶ 2, Ex. 2. The Note secured a Subordinate Mortgage held by the Secretary. *Sec'y. Stat.*, Ex. 1, *Declaration of Brian Dillon* (*Dillon Decl.*),¹ ¶ 3.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured first mortgage lender. In exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.*, ¶ 3; Ex. 1, *Dillon Decl.*, ¶ 4. By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (4)(A)[o]n February 1, 2044 or, if earlier, when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the primary note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principal residence. *Sec'y. Stat.*, ¶ 4, Ex. 2.

On or about September 30, 2015, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full. *Sec'y. Stat.*, ¶ 5; Ex. 1, *Dillon Decl.*, ¶ 4. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 6; Ex. 1, *Dillon Decl.* ¶ 6.

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

- a. \$11,625.62 as the unpaid principal balance as of June 30, 2018;
- b. \$193.60 as the unpaid interest on the principal balance at 1 % per annum through June 30, 2018;
- c. \$1,285.47 as the unpaid penalties and administrative costs as of June 30, 2018; and
- d. interest on said principal balance from July 1, 2018 at 1 % per annum until paid.

Sec'y. Stat., ¶ 7; Ex. 1, *Dillon Decl.*, ¶ 5.

¹ Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated April 17, 2018, was mailed to Petitioner at her last-known address. *Sec'y. Stat.*, ¶ 8, Ex.1, *Dillon Decl.*, ¶ 6.

In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD. *Sec'y. Stat.*, ¶ 9, Ex.1, *Dillon Decl.*, ¶ 7. Petitioner has not entered into any such agreement. *Sec'y. Stat.*, ¶ 9, Ex.1, *Dillon Decl.*, ¶ 8.

Based upon the income information Petitioner provided, the Secretary proposes a repayment schedule of \$198.88 bi-weekly, or an amount equal to 15% of Petitioner's disposable income. *Sec'y. Stat.*, ¶ 11; Ex. 1, *Dillon Decl.*, ¶ 9.

DISCUSSION

Petitioner disputes the enforceability of the subject debt and claims first, that the subject debt should have been paid by the title company; and second, that the proposed garnishment amount would create a financial hardship. As support Petitioner offered into evidence copies of her Consumer Debtor Financial Statement, her recent monthly earnings statements, bank statement from Centennial Bank that reflected certain monthly household expenses. *Petitioner's Hearing Request*, Attachments.

First, Petitioner claims the title company should have paid for the subject debt when the property was sold and further states, "This was the very first time I had any knowledge that this loan existed. I contact my Bankruptcy Attorney who suggested this be taken care of by the Title Company's insurance since they failed to discover this loan prior to the sale of the home and was unable to assist me any further since my mortgage had been removed from my bankruptcy case at the time of the loan modification." After reviewing the record, evidence is lacking in support of Petitioner's claim that the title company paid in full the subject debt. For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Here, Petitioner has not only failed to introduce into evidence that the subject debt was paid off but also has failed to produce evidence of a written release from HUD that discharges Petitioner from her responsibility for the subject debt. As a result, Petitioner's claim fails for lack of proof

Next, Petitioner states that the proposed garnishment amount would cause financial hardship for her and further claims, "Now over a year after I have sold my home and have zero way of paying this loan back, I'm faced with collection agents, threatening letters and my credit being damaged even worse when this amount could have been added to the sale of the home in 2015." *Petitioner's Hearing Request*. Petitioner may present evidence that the terms of the repayment schedule would cause a financial hardship to the Petitioner. 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 for her claim of financial hardship, Petitioner offered documentary evidence that included copies of recent monthly earnings statement and a bank statement from US Bank that reflected certain monthly household expenses. *Petitioner’s Hearing Request*, Attachments.

The bi-weekly earnings statements offered by Petitioner reflected a gross pay amount of \$1707.21 (monthly, \$3460.58) for the pay period ending April 28, 2018, less allowable monthly deductions for: federal income tax withholding, \$86.58; FICA, \$97.11; state tax withholding, \$65.33; Medicare, \$22.71; medical/dental/vision, \$113.45. *Petitioner’s Hearing Request*, Attachments. Petitioner’s bi-weekly disposable income, less allowable deductions, is \$1322.03 (monthly, \$2644.06).

Petitioner identified the following essential monthly household expenses: rent, \$965.00; automobile loan payment, \$578.00; automobile insurance, \$103.50; electric and gas, \$140.00; gasoline/auto maintenance, \$240.00; childcare, \$504.00; food, \$400.00, and life insurance, \$103.50. *Petitioner’s Hearing Request*, Attachments. These monthly expenses totaled \$3034.00.

Deducting Petitioner’s monthly household expenses of \$3034.00 from her monthly disposable income of \$2644.06 yields a negative balance of (-\$389.94), (bi-weekly at (-\$194.97)). The 15% garnishment rate proposed by the Secretary at \$198.88 bi-weekly, or \$397.76 per month, would result in a monthly balance of less than \$10.00 by the end of each month to maintain other miscellaneous expenses. Thus, imposition of the proposed garnishment amount obviously would create financial hardship for Petitioner.

While the Secretary has successfully established that the subject debt is enforceable against Petitioner as so claimed, the Court has determined that Petitioner has successfully met her burden of proof that the Secretary’s proposed garnishment amount would cause a severe financial hardship. A garnishment amount at any percentage of Petitioner’s disposable income would constitute a financial hardship sufficient enough to forego further collection for now.

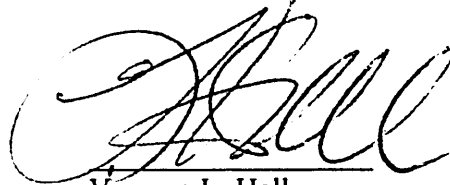
ORDER

Based on the foregoing, the Court finds that an administrative wage garnishment would cause severe financial hardship for the Petitioner. Therefore, it is hereby

ORDERED that the Secretary is not authorized to seek further collection of this outstanding obligation by means of administrative wage garnishment due to Petitioner’s financial circumstances at this time. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is VACATED.

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

SO ORDERED.

A handwritten signature in black ink, appearing to read 'V. Hall', 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.