

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

In the Matter of:

Jennifer Tremper,

Petitioner.

19-VH-0059-AG-012

721013803

August 7, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed on March 05, 2019 by Petitioner Jennifer Tremper ("Petitioner") concerning 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 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(0(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(0(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 the operation of law. Id.

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f)(4), on February 8, 2019, 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 March 11, 2019, the Secretary filed his *Statement (Sec'y. Stat.)* along with documentation in support of his position. Petitioner filed, along with her *Hearing Request*, documentary evidence on May 16, 2019. This case is now ripe for review.

FINDINGS OF FACTS

This debt resulted from a defaulted loan which was insured against non-payment by the Secretary, from an overpayment by HUD, from delinquent rent payments due to HUD, or due to other reasons.

In this case, Petitioner sought financial assistance from HUD on two separate occasions to avoid foreclosure proceedings with her primary lender, Wells Fargo. *Sec'y Stat.*, ¶ 2. On May 28, 2014 Petitioner executed and duly delivered the first Partial Claim Promissory Note ("Note 1"). *Sec'y Stat.*, Ex. 1. In exchange for Note 1, HUD loaned Petitioner \$28,109.74. *Sec'y Stat.*, ¶ 2. On September 13, 2017 Petitioner executed and duly delivered the second Partial Claim Promissory Note ("Note 2"). *Sec'y Stat.*, Ex. 2. In exchange for Note 2, HUD loaned Petitioner \$14,556.37. *Sec'y Stat.*, ¶ 2.

Both Notes lists specific events which render the debt due and payable, one of which is the payment in full of the primary note, which was insured against default by the Secretary. *Sec'y Stat.*, Ex. 1, ¶ 3(A)(i); Ex. 2, ¶ 3(A)(i). On or about April 2, 2018, the FHA insurance on the primary note was terminated, as the lender indicated that the primary note and mortgage was paid in full. *Sec'y Stat.*, ¶ 5; Ex. 3, *Declaration of*¹ ("Dillion Decl."), ¶ 3.

Pursuant to 31 C.F.R. 285.11(e), HUD mailed the Petitioner a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") that was dated December 13, 2018. *Sec'y Stat.*, ¶ 7; Ex. 3, *Dillion Decl.* ¶ 6. The Secretary filed a *Statement* with documentary evidence, in support of his position that Petitioner is currently in default on the Notes and that Petitioner is indebted to HUD for the following amounts:

- a) \$42,012.80 as the unpaid principal balance as of January 31, 2019;
- b) \$210.00 as the unpaid interest on the principal balance at 1.0% per annum through January 31, 2017;
- c) \$2,564.50 as the unpaid penalties and administrative costs through January 31, 2019; and
- d) interest on said principal balance from February 1, 2019, at 1% per annum until paid.

Sec'y Stat., ¶ 8; Ex. 3, *Dillion Decl.*, ¶ 5.

HUD did not obtain Petitioner's income statement, and so the Secretary is proposing a repayment schedule in the amount of \$1,244.09, or 15% of the Petitioner's disposable income per pay period. *Sec'y Stat.*, ¶ 10; Ex. 3, *Dillion Decl.*, ¶ 8.

DISCUSSION

Petitioner does not contest the debt or amounts claimed by the Secretary in this case. Rather, Petitioner claims that repayment of the debt at the proposed garnishment amount will cause severe financial hardship. *Petitioner's Hearing Request* ("Pet'r. 's Hr'g. Req"), filed February 5, 2014. More specifically, Petitioner states, "I am not financially able to pay the

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

amount requested. I have a family to support.” *Pet’r.’s Hr’g. Req.* To show financial hardship, Petitioner “must submit ‘particularized evidence,’ including proofs of payment, showing that he 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, Petitioner offered into evidence copies of a list of individuals who reside with her, pay statements for her and her boyfriend Rolando Valenzuela, and various proofs of payments for medical bills, utility bills, credit cards, and car loans. *Petitioner’s Documentary Evidence* (“*Pet’r.’s Doc. Evid.*”), filed May 16, 2019.

The Court has previously maintained that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986). But, should financial hardship be proven under 24 C.F.R. § 285.11(k)(3), this Court may downwardly adjust the garnishment amount to reflect the debtor’s financial condition. In order to establish credibility of Petitioner’s financial hardship claim, the Court must first determine Petitioner’s monthly disposable income and, thereafter, review the evidence Petitioner submitted, if any, that supports her alleged expenses.

Disposable income is defined as “that part of the debtor’s compensation from an employer that remains after the deduction of health insurance premiums and any other 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). Payments for essential monthly household expenses are then afterwards considered against the disposable income figure before determining if a wage garnishment will create a financial hardship. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05 (January 20, 2012).

Based on Petitioner’s pay statements, her monthly gross income averages to a total amount of \$6,196.00. Her monthly deductions average to an amount of \$1,552.00. This includes federal income tax, \$772.00; social security tax, \$372.00; Medicare, \$86.00; other medical deductions \$324.00. After deducting Petitioner’s monthly deductions from her gross monthly income, her monthly disposable income is \$4,644.00. Petitioner’s share of the essential monthly household expenses averages to a total amount of \$2,229.00² and includes: mortgage payment, \$1,063.31; various utility payments for water, \$110.31; electric, \$72.40; Spectrum internet and TV, \$87.59; and cell phone, \$60.52; medical expenses, \$165.12; and two substantial car payments; \$669.36. Moreover, the Court excluded Petitioner’s credit card expenses because the documents submitted lacked the specificity needed to equip the Court to assess whether the credit cards were used for essential household expenses, such as costs for basic food, clothing, and shelter. Michelle Edwards, HUDOHA No. 12-M-CH-AWG23, at 3; In re: Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004).

Based on the figures provided, Petitioner’s monthly disposable income of \$4,644.00, less her total monthly essential household expenses of \$2,229.00, result in a positive balance of \$2,415.00 per month to cover otherwise non-essential monthly expenses. As a result, the Court finds that the proposed garnishment amount would not create a financial hardship because Petitioner’s positive balance would

² Petitioner provided evidence indicating that she lives and shares expenses with her boyfriend Rolando Valenzuela. The total essential expenses for their household averages to an amount of \$4,458.00 That amount was split evenly between Petitioner and Petitioner’s boyfriend.

more than sufficiently cover both the proposed wage garnishment amount and any other miscellaneous expenses incurred by the Petitioner that are considered non-essential.

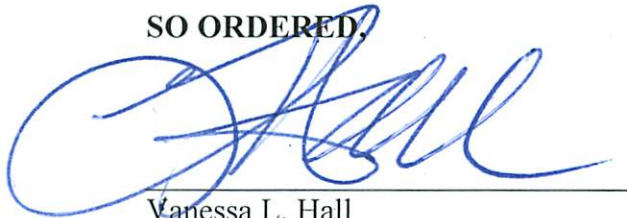
Pursuant to 31 C.F.R. §285.11(i)(2)(i)(A) the amount of the garnishment shall not exceed 15% of the debtor's disposable pay. HUD's current proposed repayment schedule of \$1,244.09 per month was not based on Petitioner's income because HUD was unsuccessful in obtaining information regarding Petitioner's income. *Sec'y Stat.*, ¶ 10. So, the Secretary is seeking authorization of a repayment schedule to recover the subject debt at \$1,244.09 per month under Federal Claims Collection Standards (FCCS), or 15% of Petitioner's monthly disposable income at \$696.60. Without Petitioner's income, the amount recommended by the FCCS of \$1244.09 would liquidate the subject debt within the three-year requirement of FCCS. However, Petitioner has since provided her most recent income statements and, based on the information provided, a 15% garnishment rate of her monthly disposable income would be \$696.60. Based on the evidence presented, the Court has determined that Petitioner's financial condition is secure, and her claim of financial hardship lacks merit.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter on February 8, 2019 to the U.S. Department of Treasury for administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at an amount equal to 15% of Petitioner's monthly disposable income.

SO ORDERED.



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.