

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

In the Matter of:

Kristie Griffin aka Kristie Kolodziejcyk,

Petitioner.

19-VH-0089-AG-021

780796824

August 26, 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 Kristie Griffin aka Kristie Kolodziejcyk ("Petitioner,") on March 27, 2019, 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"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

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 April 12, 2019, 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 May 10, 2019, the Secretary filed his *Statement* along with documentation in support of his position. On May 17, 2019, Petitioner filed a brief *Statement*, along with additional documentary evidence, in support of her position. 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 Kristie Lynn Griffin ("Petitioner") executed and delivered to the Secretary an FHA Manufactured Home Retail Installment Contract and Disclosure Statement ("Note"), in the amount of \$45,639.31. The Note financed the purchase of a manufactured home, secured a Subordinate Mortgage held by the Secretary. *Secretary's Statement* (*Sec'y. Stat.*), ¶ 2, Ex. 1, Note. The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. *Sec'y. Stat.*, ¶ 3, Ex. 2, *Declaration of Kathleen M. Porter* (*Porter Decl.*),¹ ¶ 4.

Petitioner failed to make payments as agreed in the Note, and the Note was subsequently assigned to HUD by Vanderbilt Mortgage and Finance, Inc., pursuant to regulations governing the Title I Insurance Program. *Sec'y. Stat.*, ¶ 4, Ex. 2, *Porter Decl.* ¶ 3. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 5, Ex. 2, *Porter Decl.*, ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated November 29, 2018, was mailed to Petitioner. *Sec'y. Stat.*, ¶ 7, Ex. 2, *Porter Decl.* ¶¶ 5-6.

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

- a. \$13,485.82 as the unpaid principal balance as of March 31, 2019;
- b. \$11.23 as the unpaid interest on the principal balance at 1% per annum through March 31, 2019; and
- c. interest on said principal balance from April 1, 2019 at 1% per annum until paid.

Sec'y. Stat., ¶ 6; Ex. 2, *Porter Decl.*, ¶ 4.

Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD, in accordance with 31 C.F.R. 285.11(e)(2)(ii). However, Petitioner has failed to do so. *Sec'y. Stat.*, ¶ 7; Ex. 2, *Porter Decl.*, ¶ 4.

Petitioner provided HUD a copy of her bi-weekly pay statement for the pay period ending April 12, 2019 to HUD. Based upon that information, HUD proposes a debt repayment schedule of \$151.87 bi-weekly, or an amount equal to 15% of Petitioner's disposable income. *Sec'y. Stat.*, ¶ 9, Ex. 2, *Porter Decl.*, ¶ 7.

DISCUSSION

Petitioner does not dispute the amount of the subject debt but instead challenges first the existence of the debt; and second, challenges the proposed wage garnishment amount as a basis for claiming financial hardship. Petitioner contends that the subject debt should be the responsibility of

¹ Kathleen M. Porter is the Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

her ex-spouse pursuant to the terms of a *Divorce Decree*. More specifically, Petitioner alleges “I do not feel this debt is owed by me. I left the house in good standings [sic] to my ex-husband in the divorce. He is responsible for any debt owed.” *Petitioner’s Statement (Pet’r’s Stat.)* filed May 17, 2019. Along with her *Hearing Request* and *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings*, Petitioner also offered copies of her *Account Information Link Report (Link Report)* and *Agreed Final Decree of Divorce (Divorce Decree)* from the District Court of DeWitt County, Texas, 135th Judicial District, dated October 21, 2015 as evidence. *Hearing Request*, Attachments; *Pet’r’s Stat.*, Attachments. After reviewing Petitioner’s record of evidence, the Court has determined that Petitioner has failed to meet her burden of proof that the subject debt does not exist, and also that the proposed wage garnishment would cause financial hardship.

First, the evidence introduced by Petitioner that the subject debt is the responsibility of her ex-husband fails for want of proof. Petitioner submitted a copy of the *Divorce Decree* in which her former spouse, “Carlos Lamar Griffin” was adjudged to receive, as an asset, the property associated with the subject debt and was further ordered to pay the debt associated with said property as his responsibility. *Hearing Request*, Attachment, *Divorce Decree* at 6. But the *Divorce Decree* only determined the rights and liabilities between Petitioner and her former spouse, and did not determine the rights and liabilities between Petitioner and third parties. Kimberly S. Kim. (Thiedel), HUDBCA No. 89-4587-L74 (April 23, 1990). A document, such as the *Divorce Decree*, that purports to release Petitioner from her joint obligation by dissolution of marriage does not affect the claims of an existing creditor (herein HUD) unless the creditor was a party to the action. Janet T. Rodocker, HUDBCA No. 00-A-CH-AA17 (May 22, 2000).

While Petitioner may be divorced from her former spouse, neither the Secretary nor the lender was a party to that divorce action. In this case, Petitioner is jointly and severally liable with her ex-husband for repayment of the debt according to the terms of the *Note* signed by both. The *Note* is the controlling document not the *Divorce Decree*. Consequently, the Secretary may proceed against any co-signer for the full amount of the debt including Petitioner. See Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003). Perhaps as a recourse, Petitioner may consider seeking enforcement, in the state or local court, of the debt that was originally granted to her former spouse so that Petitioner may recover from her ex-husband the monies she will pay to HUD in satisfaction of subject debt. See William Holland, HUDBCA No. 00-A-NY-AA83, dated Oct. 12, 2000; Michael York, HUDBCA No. 09-1-1-CH-AWG36 dated June 26, 2009, at 3. That course of action would of course be separate and distinct from the claim addressed in this proceeding. In the meantime, the Court finds that without proof of a written release directly from HUD to Petitioner, Petitioner remains contractually obligated to pay the subject debt as co-signor on the *Note*.

Next, Petitioner claims that the proposed garnishment amount would create a financial hardship for her. She further claims “I have 2 children and no other financial help besides my Income, (I do not get child support like I am supposed too.)” 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. 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). Here, the only additional evidence Petitioner submitted was a copy of her *Link Report* pertaining to a status report of debt unrelated to essential monthly expenses or proofs of payment of the same. Without this evidence, the *Link*

Report, alone, is not credible as proof of Petitioner's financial hardship in this case. Therefore, the Court finds again that Petitioner's claim of financial hardship fails for lack of proof.

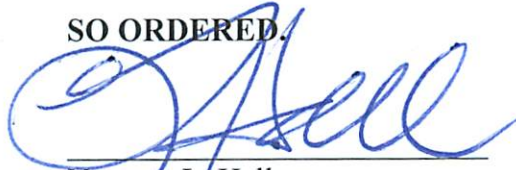
ORDER

Based on the foregoing, the Court finds that the debt that is the subject of this proceeding exists and is enforceable in the amount alleged by the Secretary.

The Order imposing the stay of referral of this matter issued on April 12, 2019 to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment at the proposed repayment schedule of \$151.87 bi-weekly, or an amount equivalent to 15% of Petitioner's disposable income.

SO ORDERED.



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.