

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

In the Matter of:

**VERONA WATSON,**

Petitioner.

20-AM-004-AG-004

721008831

August 19, 2020

**DECISION AND ORDER**

On October 1, 2019, Verona Watson, (“Petitioner”) filed a Request for Hearing concerning the amount and enforceability of a debt allegedly owed to the U.S. Department of Housing (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A), authorizes federal agencies to utilize administrative offset as a means for collecting debts owed to the United States government. The regulation governing offsets can be found at 24 C.F.R. §§ 17.65-17.79 *et seq.*

The Secretary of HUD designated the administrative judges of the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts using administrative offset. This administrative court is authorized to issue written decisions concerning whether a debt or part of a debt is past due and legally enforceable. 24 C.F.R. § 17.73.

**BACKGROUND**

The Secretary alleges that, on or about July of 2013, Petitioner needed financial assistance from HUD to help her avoid possible foreclosure of her mortgage with her primary lender. (*See Secretary’s Statement*, (“Sec’y Stat.”), ¶ 3; Exh. A, Declaration of Brian Dillon, (“Dillon Declaration”) Acting Director of the Asset Recovery Division, HUD Financial Operations Center, ¶ 1). HUD loaned Petitioner the sum of \$35,422.30 to help her avoid defaulting on her mortgage with primary lender. Petitioner executed and duly delivered a subordinate note (“Note”), evidencing this loan to HUD. (*Sec’y Stat.*, Exh. B, ¶¶ 1,2, the Note, dated July 29, 2013). Under the terms of the Note, Petitioner was to pay the principal amount of the unpaid balance on the Note until it was paid in full. (*Sec’y Stat.*, Exh. B, ¶ 2). The Note cited specific events that would cause the remaining unpaid balance of the debt to become immediately due and payable – one of which was when the FHA insurance on the primary note was terminated. (*See Sec’y Stat.*, Exh. B, ¶¶ 4(A)(i) & (iii)).

On or about October 31, 2015, the FHA insurance on Petitioner’s primary note was terminated. (Dillon Dec’l.). This termination automatically triggered the provisions of ¶ 4(A)(i) & (iii) of the Note, requiring Petitioner to pay the full amount owed under the Note to HUD.

HUD, thereafter, made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so (Dillon Dec’l. at ¶ 5). As a result, the Secretary alleges that Petitioner is indebted to HUD for the following amounts:

- a) \$10,642.08 as the unpaid balance as of September 30, 2019;
- b) \$26.58 as the unpaid interest on the principal balance at 1% per annum through September 30, 2019;
- c) \$0.00 as the unpaid penalties and administrative costs on the balance through September 30, 2019; and
- d) interest on said principal balance from October 2019 at 1% per annum until paid.

(Id.).

On September 17, 2019, a *Notice of Intent to Initiate Administrative Wage Garnishment Proceedings* (“Notice”) was sent to Petitioner. (Id. at ¶ 6). Petitioner requested a hearing in connection with the Note in order to contest the amount of her indebtedness and allege financial hardship. At this time, Petitioner has not entered into a written payment agreement with HUD in response to the Notice pursuant to 31 C.F.R. § 285.11(e)(2)(ii). Id. at 7.

### **DISCUSSION**

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. (See 31 C.F.R. § 285.11(f)(8)(i)). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or the amount of the debt is incorrect. (See 31 C.F.R. § 285.11(f)(8)(ii)). Additionally, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioner’s indebtedness, the Secretary has filed *the Secretary’s Statement* along with the sworn declaration of Brian Dillon, Director, Asset Recovery Division; a copy of the Note, and HUD’s response to Petitioner’s request for HUD’s records relating to this debt. Accordingly, the Court finds that the Secretary has met his initial burden of proof.

In Petitioner’s *Request for Hearing*, Petitioner indicated the amount of debt was incorrect and repaying this debt will cause financial hardship. (See Petitioner’s Letter, dated September 28, 2019, (“Pet’r Ltr.”), ¶ 1). Petitioner maintains the loan amount was for \$35,422.30 and because she and her family have paid over \$40,000 between intercepted federal tax returns and administrative wage garnishment, she should not have to pay any more money towards the debt. Id. Further, Petitioner claims repaying this debt is causing both her and her family a financial hardship, plus Petitioner has two children who are financially dependent on her. Id.

In order for a Petitioner to not be held liable for the subject debt, they must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release them from her

legal obligation. *In re Shirley Brown*, HUDOHA No. 17-AM-0070-AO-023, March 13, 2019) citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005). Petitioner does not contend she did not sign the note, but rather asserts she should not have to pay any further amounts since she has already paid \$40,323.95 towards the debt, which is more than the principal loan amount. But, when Petitioner became delinquent on the loan payments, this figure increased to include the interest accrued on the principal, plus the fees and administrative costs charged by U.S. Department of Treasury (“Treasury”), which total 30% of each payment. (Dillon Dec’l., ¶ 8, Sec’y Stat., Exh A, ¶¶ 2-8). Furthermore, payments made by the debtor are applied first to fees, then interest, then principal. *Id.* Although Petitioner does provide some evidence of repaying part of the debt, she is still indebted to HUD for the amount stated in the Secretary’s Statement. Accordingly, the Court finds that Petitioner is indebted to the Department in the amounts claimed by the Secretary.

Petitioner also argues that the Secretary’s proposed repayment schedule will cause financial hardship. (Pet’r Letter). This Court is authorized to take into account expenses necessary for any household, such as basic expenses for food, clothing, and shelter. *Michelle Edwards*, HUDOHA No. 12-M-CH-AWG23, at 3; *In re: Elva and Gilbert Loera*, HUDOHA No. 03-A-CH-AWG28 (July 30, 2004). In appropriate cases, this Court has the discretion to modify the Secretary’s proposed repayment schedule where there is a bona fide showing of financial hardship. 31 C.F.R. §285.11(e)(8)(ii). However, this Court has been reluctant to exercise this discretion when there is insufficient documentary evidence of necessary household expenses. *In re: Matthew C. Shaw*, HUDOHA 18-AM-0180-AG-090 (April 1, 2019).

In this case, Petitioner was specifically ordered to file documentary evidence in support of any claim of financial hardship. Petitioner failed to do so. Accordingly, the Court finds Petitioner did not meet her burden to prove that repayment of the debt, in the manner proposed by the Secretary, would cause a financial hardship. The Court notes, however, that the provisions of 31 C.F.R. §285.11(k), permit Petitioner to move for reconsideration of this matter if and when her financial circumstances warrant further review.

### **ORDER**

For the reasons set forth above, I find the debt that is subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is

**ORDERED** that the Order imposing the Stay of Referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is

**FURTHER ORDERED** that the Secretary is authorized to collect the debt in this case in the amount of 15% of Petitioner’s disposable monthly income, or in the maximum amount permitted by law.

**SO ORDERED,**



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H. Alexander Manuel  
Administrative Judge

**APPEAL NOTICE:** You have the right to move for reconsideration of this case before the HUD Office of Hearing and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a new showing of evidence that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishment cases, *See* 24 C.F.R. § 17.81, 31 C.F.R. § 285.11(f), and 5 U.S.C. 701, *et seq.* For administrative offset cases, *See* 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, *et seq.*