

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

In the Matter of:

Timothy Planicka,

Petitioner.

19-AM-0176-AG-042

721012869

July 14, 2022

DECISION AND ORDER

On August 7, 2019, Timothy Planicka, (“Petitioner”) filed a Request for Hearing concerning the amount, enforceability, or payment schedule 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. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

BACKGROUND

Although Petitioner does not dispute the existence or enforceability of the debt owed to HUD, background facts are nevertheless provided below in an effort to complete the record. On or about June 27, 2014, Petitioner sought financial assistance from HUD to help him avoid possible foreclosure of his mortgage with his primary lender. (*See Secretary's Statement*, (“*Sec’y Stat.*”), ¶ 3; Exh. A, Declaration of Brian Dillon, Director of Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 4). HUD loaned Petitioner the sum of \$20,099.62 to help him avoid defaulting on his primary mortgage. (*See Sec’y Stat.*, ¶ 4; Exh. B, Subordinate Note, dated June 10, 2014 (“Note”), ¶ 2). In exchange, Petitioner executed and duly delivered a subordinate note (“Note”), evidencing this loan to HUD. (*See Sec’y Stat.*, ¶ 4; Exh. B, Note). 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. (*See Exh. B, Note*, ¶ 2). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable – one of which was when Petitioner's underlying mortgage to his primary lender was paid in full. (*See Sec’y Stat.* ¶ 5, Ex. B, Note, ¶ 4(A)(i)).

On or about November 29, 2016, Petitioner's primary lender notified HUD that Petitioner's underlying mortgage had been paid in full. This automatically triggered the provisions of ¶ 4(A)(i) of the Note, requiring Petitioner to pay the full amount owed under the Note to HUD. (*See Sec'y Stat.*, ¶ 7; Exh. B, Note, ¶ 4(A)(i)). Thereafter, HUD attempted to collect the amounts owed from Petitioner, but Petitioner failed to pay. (*Sec'y Stat.*, ¶¶ 8-9; Exh. A, Dillon Decl., ¶ 6). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$19,285.86 as the unpaid principal balance as of August 31, 2019;
- b) \$96.42 as the unpaid interest on the principal balance at 1% per annum through August 31, 2019;
- c) \$1,370.13 as the unpaid penalties and administrative costs as of August 31, 2019; and
- d) Interest on said principal balance from September 1, 2019, at 1% per annum until paid.

(*Sec'y Stat.*, ¶ 9; Exh. A, Dillon Decl., ¶ 6).

On or about July 12, 2019, a Notice of Intent to Initiate Wage Garnishment Proceedings ("Notice") was mailed to Petitioner. (*See Sec'y Stat.*, ¶ 7; Exh. A, Dillon Decl., ¶ 7). Pursuant to 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was given an opportunity to enter into a written repayment agreement under terms acceptable to HUD, which he has not done. (*See Sec'y Stat.*, ¶ 7; Exh. A, Dillon Decl., ¶ 7). According to the Secretary's calculations, Petitioner's wages had not yet been garnished as of September 9, 2019. *Id.* Petitioner provided a copy of his most recent pay statement for the pay period ending August 3, 2019. (*See Sec'y Stat.*, ¶ 8; Exh. A, Dillon Decl., ¶ 8). As a result, the Secretary proposes a repayment schedule in the amount of \$163.65 weekly or 15% of the Petitioner's disposable income. *Id.*

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 that 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 the proposed repayment schedule are unlawful, would cause undue financial hardship to Petitioner, or that the alleged debt is legally unenforceable. *Id.*

As evidence of Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement* and the *Secretary's Supplemental Statement*, together with the sworn Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (Exh. A, Dillon Decl.); a copy of the subordinate note (Exh. B, Note); copies of correspondence between Petitioner and HUD (Exh. C, emails between Petitioner and HUD; Exh. D, "Pet'r response to HUD, dated October 28, 2019); and the Supplemental Declaration of Brian Dillon ("Supp. Dillon

Decl.”) (Exh. E, Supp. Dillon Decl.). Accordingly, the Court finds that the Secretary has met her initial burden of proof.

In his *Request for Hearing*, filed along with documentary evidence containing his monthly bills and expenses, Petitioner alleges that garnishment of his wages is prohibited by 31 C.F.R. § 285.11(j) and his case should be temporarily dismissed because he was involuntarily separated from his employment and is currently unemployed. (*See* Exh. C, Pet’r email to HUD, dated October 27, 2019). Petitioner has not alleged or submitted any documentary evidence showing that the Note is unenforceable. It appears that Petitioner does not contest the amount of the debt in this case but instead seeks to minimize financial hardship that may be caused by the Secretary’s proposed repayment schedule.

Petitioner further argues that even if he is subject to wage garnishment, the amount proposed by the Secretary would cause him undue financial hardship. (*See* Exh. C, Pet’r email to HUD, dated October 28, 2019). While Petitioner has produced numerous bills and expenses, he has produced nothing in the way of proof that he is involuntary unemployed. (*See Supp. Sec’y Stat.*, ¶ 6; Pet’r Documents, filed October 28, 2019). Although Petitioner has alleged that his employment was terminated and that he is presently looking for work, he has nevertheless failed to submit evidence and his alleged former employer has not corroborated his account. (*See Supp. Sec’y Stat.*, ¶ 9; Exh. D, Pet’r reply to HUD counsel; Exh. E, Supp. Dillon Decl., ¶¶ 3-4).

In response to Petitioner and following an Order from this Court, the Secretary filed the *Supplemental Secretary’s Statement* and alleged that, other than his statement, Petitioner had not provided evidence that he is unemployed. (*See Supp. Sec’y Stat.*, ¶ 9; Exh E, Supp. Dillon Decl., ¶ 3). The Secretary further argues that even if Petitioner is unemployed, he has failed to provide evidence that he was involuntarily separated from his previous employer. (*See* Exh. E, Supp. Dillon Decl., ¶ 4).

Pursuant to 31 C.F.R. § 285.11(j), HUD “may not garnish the wages of a debtor who it knows has been involuntarily separated from employment until the debtor has been reemployed continuously for at least 12 months.” On October 28, 2019, HUD requested evidence from Petitioner that he was involuntarily unemployed, but Petitioner responded by email, “Unfortunately I cannot send you a copy of my last pay stub because Breckenridge Trucking Inc. is holding my last paycheck unlawfully Currently I am unemployed until further notice.” (Exh. C, Pet’r email to HUD, dated October 27, 2019). Petitioner also stated, “The only option [my employer] gave me was to go out over the road truck driving [sic] which is not an option for me.” (Exh. D, Pet’r email to HUD, dated October 28, 2019). In the absence of documentary evidence beyond Petitioner’s statement that he was unemployed, this Court cannot conclude that Petitioner has been involuntarily separated from employment. Even if Petitioner had shown that he was involuntarily separated, he states that his employer gave him the option to take on different work, which Petitioner did not do. Therefore, this Court finds that the provisions of 31 C.F.R. § 285.11(j) do not apply in this case.

Petitioner further argues that the Wage Garnishment Order will cause him undue financial hardship. (*See* Exh. C, Pet’r email to HUD, dated October 27, 2019). 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, we have been reluctant to exercise this discretion in cases where there is insufficient documentary evidence of necessary household expenses. On September 25, 2019, this Court ordered Petitioner to file documentary evidence showing that the imposition of a repayment schedule would create undue financial hardship. (*Order for Documentary Evidence*, filed September 25, 2019). In response to the Order, Petitioner did provide some evidence of financial hardship, including credit card bills, utility bills, and his mortgage statement. (*See Pet'r Documents*, filed October 29, 2019). Petitioner's bills include: an insurance payment to State Farm for \$171.28; trash, water, and electric utility bills for \$66.45, 51.91, and 123.90; a mortgage payment for \$3,865.35 (including late payments); a medical bill for \$144.00; and credit card bills with payments of \$50.00, \$75.00, \$3,480.98, \$300.00, and \$6,137.03 (Pet'r Documents, filed October 29, 2019).

Although Petitioner's credit card bills do show Petitioner's payments, Petitioner has not produced documentary evidence identifying or itemizing his credit card purchases. Since the Court cannot consider whether Petitioner's actual purchases were essential in the absence of documentary evidence, the minimum monthly payments on each of Petitioner's credit cards will be given credit. Accordingly, Petitioner will receive credit for the insurance bill of \$171.28, utility bills totaling \$242.26, his monthly mortgage payment of \$1,252.24, medical expenses of \$144.00, and credit card minimum monthly payments of \$37.00, \$74.00, \$25.00, \$256.76, and \$20.96. This brings Petitioner's total monthly expenses to \$2,223.50, or \$555.88 weekly.

By the Secretary's calculations, Petitioner has a net disposable weekly income of \$1,091.01. Therefore I find that, less Petitioner's weekly essential household expenses of \$555.88, the proposed repayment amount of 15% of disposable pay would indeed create undue financial hardship for Petitioner at this time. However, I find that a 5% garnishment would allow for repayment of the debt without causing undue hardship.

If Petitioner seeks to negotiate a repayment schedule with the HUD, he should be aware that this Court only has the authority to make a "determination of whether the debt is enforceable and past due." (*See Edgar Joyner Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005)). This Court does not have the authority to establish "a debtor's repayment amount or a schedule of payments." *Id.* As such, while Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to "extend, recommend or accept any payment plan or settlement offer on behalf of the Department." *Id.* If Petitioner wishes to discuss a payment plan, Petitioner may discuss the matter with Michael DeMarco, Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859, or write to HUD Financial Operation Center, at 50 Corporate Circle, Albany, NY 12203-5121. Petitioner is also entitled to seek reassessment of this financial hardship in the event that he experiences materially changed financial circumstances. *See* 31 C.F.R. §285.11(k).

ORDER

For the reasons set forth above, 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 hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of 5% of Petitioner's disposable pay for each pay period.

SO ORDERED,



H. Alexander Manuel
Administrative Judge

APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings 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 unless you can demonstrate that you have new evidence to present that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), 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.*