

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

In the Matter of:

Victoria Williams,

Petitioner.

20-AM-0267-AG-167

721016899

July 14, 2022

DECISION AND ORDER

On or about August 21, 2020, Victoria Williams, (“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

In or around June 2015, Petitioner sought financial assistance from HUD to help her avoid possible foreclosure of her mortgage with her primary lender. (*See Secretary's Statement*, (“*Sec’y Stat.*”), ¶ 2; Exh. A, Declaration of Brian Dillon, Director of Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), ¶ 4). HUD loaned Petitioner the sum of \$36,075.96 to help her avoid defaulting on her primary mortgage. (*See Sec’y Stat.*, ¶¶ 3-4; Exh. B, Subordinate Note, dated July 8, 2015 (“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 her primary lender was paid in full. (*See Sec’y Stat.* ¶ 5; Exh. B, Note, ¶ 4(A)(i)).

On or about November 19, 2019, Petitioner's primary lender notified HUD that Petitioner's underlying mortgage had been paid in full. (*See Sec’y Stat.*, ¶ 6; Dillon Decl., ¶ 4). 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. (*See Sec'y Stat.*, ¶¶ 8-9; Exh. A, Dillon Decl., ¶ 5). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$36,075.96 as the unpaid principal balance as of October 30, 2020;
- b) \$481.12 as the unpaid interest on the principal balance at 2% per annum through October 30, 2020;
- c) \$2,178.99 as the unpaid penalties as of October 30, 2020;
- d) \$52.58 as the unpaid administrative costs as of October 30, 2020; and
- e) Interest on said principal balance from November 1, 2019, at 2% per annum until paid.

(*Sec'y Stat.*, ¶ 9; Exh. A, Dillon Decl., ¶ 5).

On or about August 13, 2020, a Notice of Intent to Initiate Wage Garnishment Proceedings (“Notice”) was mailed to Petitioner. (*See Sec'y Stat.*, ¶ 10; Exh. A, Dillon Decl., ¶ 6). 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 she has not done. (*See Sec'y Stat.*, ¶ 11; Exh. A, Dillon Decl., ¶¶ 7-8). Petitioner provided HUD with a completed Financial Statement indicating that her monthly disposable income is \$4,753.28, and her spouse receives additional weekly unemployment benefits of \$198.00. (*See Sec'y Stat.*, ¶ 13; Exh. A, Dillon Decl., ¶ 10). After determining that Petitioner’s biweekly net disposable pay is \$1,797.82, the Secretary proposes a repayment schedule in the amount of \$269.67 biweekly or 15% of the Petitioner’s disposable pay. (*See Sec'y Stat.*, ¶ 14; Dillon Decl., ¶¶ 10-11).

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* together with the sworn Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (Exh. A, Dillon Decl.) and a copy of the subordinate note (Exh. B, Note). Accordingly, the Court finds that the Secretary has met her initial burden of proof.

In her *Request for Hearing*, Petitioner first contests liability for the alleged debt in this case, and further asserts that repayment of the alleged debt would cause undue financial

hardship. (*See Request for Hearing*). Apart from this allegation, Petitioner has not filed any documentary evidence showing that the Note is legally unenforceable.

In response to Petitioner's *Request for Hearing*, the Secretary produced the *Secretary's Statement*, arguing that Petitioner has produced no evidence to support her claim that the debt is not due and enforceable. (*See Sec'y Stat.*, ¶ 12). The Court agrees with the Secretary's argument that Petitioner has not produced documentary evidence that the debt is not due and enforceable. Petitioner has also not provided any documentary evidence that she relied upon written statements made by HUD officials that his debt was satisfied, nor has she proven that she has repaid the Note in full.

Petitioner has also not provided evidence of any release from HUD of her obligation to repay the Note. For the debt to be extinguished, HUD must provide a written release that specifically discharges the debtor's obligation, for valuable consideration accepted by the lender from the debtor, which would indicate intent to release. (*See Franklin Harper*, HUDBCA No. 04-D-CH-AWG41 (March 23, 2005); *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Cecil F. & Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. & Rita de los Santos*, HUDBCA No. 86-1255-F262) (February 28, 1986)). Petitioner has provided no evidence that she received a written release from HUD officials to extinguish the alleged debt in this case.

The assertion that Petitioner is not responsible for the debt when HUD has not released him is unreasonable, unjust, and entirely without merit. Petitioner provides no legal authority or language in the Note that suggests that the Note was paid or that another party was responsible for the Note. Therefore, I find that, in the absence of documentary evidence showing that the Note was paid or that HUD released the debt obligation, the Note is due and enforceable and Petitioner remains indebted to HUD.

Petitioner has failed to submit any documentary evidence to prove that she is not indebted to HUD. I therefore find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

DETERMINING REPAYMENT

Petitioner further argues that the Wage Garnishment Order will cause her undue financial hardship. (*See Request for Hearing*). 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 to prove financial hardship. On October 8, 2020, this Court ordered Petitioner to file documentary evidence showing that the imposition of a repayment schedule would create undue financial hardship. (*See Notice of Docketing, Order, and Stay of Referral*, filed October 8, 2020). In response to the Order, Petitioner produced little evidence of financial hardship. Petitioner provided a Financial Statement showing a monthly net household income of \$4,753.28 and her biweekly paystub, as well as an electric bill showing a \$145.59 monthly payment and an AT&T phone bill, totaling \$1,071.81. (*See Dillon Decl.*, ¶ 9-10; Dillon Exh. A, Pet'r Pay Statement; Pet'r Doc. Evid., filed

November 11, 2020). Outside of the two bills Petitioner submitted, Petitioner does not provide documentary evidence of essential household expenses, but instead alleges in her Financial Statement that her monthly essential expenses include \$2,000 in rent; \$500 in food, \$660 in electricity, \$150 in telephone bills; and between \$600 and \$700 in oil. (See Pet'r Financial Statement, dated October 20, 2020). However, as this Court informed Petitioner in its *Notice of Docketing, Order, and Stay of Referral*, Petitioner must submit evidence of financial hardship: "Petitioner may also present evidence that the terms of the repayment schedule [. . .] would cause a financial hardship to Petitioner." (See *Notice of Docketing, Order, and Stay of Referral*, filed October 8, 2020). In the absence of documentary evidence showing Petitioner's monthly essential household expenses, this Court cannot determine that Petitioner will experience financial hardship based on Petitioner's mere allegations. Therefore, I find that the proposed repayment amount of \$269.67 would not create undue financial hardship for Petitioner at this time. I find that a garnishment of \$269.67 biweekly would allow for repayment of the debt without causing undue hardship.

Petitioner should be aware that she is entitled to seek reassessment of this financial hardship determination in the event that she experiences materially changed financial circumstances. See 31 C.F.R. §285.11(k). If Petitioner seeks to negotiate a repayment schedule with the HUD, she should be aware that this Court only has the authority to find financial hardship and 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.

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, issued on October 8, 2020, 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 \$269.67 biweekly, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month.

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.*