

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

In the Matter of:

Caren Lacuesta,

Petitioner

21-VH-0186-AG-102

721011730

February 16, 2023

DECISION AND ORDER

On July 1, 2021, Petitioner filed a hearing request, along with documentary evidence, concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("Secretary"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts 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. 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(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(1) (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(1) (4), on July 26, 2021, the Court stayed referral of the debt to the U.S. Department of the Treasury until the issuance of this written decision. *Notice of Docketing, Order and Stay of Referral ("Notice of Docketing")*. On September 23, 2021, the Secretary in response filed her *Statement* along with documentation in support of her position. On February 10, 2023 and February 13, 2023, Petitioner filed necessary additional documentary evidence in response to the Court's *Order for Clarification* issued on January 12, 2023. This case is now ripe for review.

FINDINGS OF FACT

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) pursuant to 31 U.S.C. § 3720D.

Caren U. Lacuesta (“Petitioner”) executed and delivered to the Secretary a *Subordinate Note* (the “Note”), dated October 8, 2015, in the principal amount of \$73,666.37. *Secretary’s Statement* (Sec’y. Stat.), ¶ 2; Ex. 1, Note. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA-insured primary mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec’y. Stat.*, ¶ 3, Ex. 2, *Declaration of Gary Sautter* (*Sautter Decl.*), ¶ 4.¹

By terms of the Subordinate Note, the amount to be repaid thereunder becomes due and payable “[o]n October 1, 2045 or, if earlier, when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principal residence.” *Sec’y. Stat.*, ¶ 4. Ex. 1, Note, ¶ 4 (A); Ex. 2, *Sautter Decl.* ¶ 3;

On or about April 18, 2017, the Petitioner’s primary mortgage was paid in full, and the FHA mortgage insurance was terminated, an event that caused the Note to become due. *Sec’y. Stat.*, ¶ 5. Ex. 1, ¶ 4; Ex. 2, *Sautter Decl.* ¶ 4; Accordingly, HUD has attempted to collect the amounts due under the Note, but Petitioner remains indebted to HUD. *Sec’y. Stat.*, ¶ 5. Ex. 1, ¶ 4; Ex. 2, *Sautter Decl.* ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding (“Notice”), dated June 2, 2021, was mailed to Petitioner’s last-known address. *Sec’y. Stat.*, ¶ 6. Ex. 1, ¶ 4; Ex. 2, *Sautter Decl.* ¶ 5. In accordance with the Notice and 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD, which could have avoided issuance of a wage garnishment order to Petitioner’s employer. However, to date, Petitioner has not entered into any such agreement. *Sec’y. Stat.*, ¶ 7; Ex. 2, *Sautter Decl.* ¶ 5.

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

- a. \$64,105.57 as the unpaid principal balance as of August 5, 2021;
- b. \$938.50 as the unpaid interest on the principal balance at 1.0% per annum as of August 5, 2021;
- c. \$3,177.08 as the unpaid penalties as of August 5, 2021;
- d. \$209.12 as the unpaid administrative costs as of August 5, 2021; and;
- e. interest on said principal balance from August 6, 2021, at 1.0% per annum until paid.

Sec’y. Stat., ¶ 8; Ex. 2, *Sautter Decl.* ¶ 5.

Petitioner provided a copy of her biweekly pay statement dated July 15, 2021. According to the information contained therein, HUD proposes a wage garnishment repayment schedule in

¹ Gary Sautter is Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center

the amount of \$8.92 biweekly, or an amount equal to 15% of Petitioner's disposable pay. *Sec'y. Stat.*, ¶ 11; Ex. 2, *Sautter Decl.* ¶9. the Secretary respectfully requests a finding that the Petitioner's debt is past due and legally enforceable; authorization of the proposed repayment schedule; and that stay of referral of this matter to the Department of the Treasury for collection by Administrative Wage Garnishment be vacated. *Id.*

DISCUSSION

Petitioner does not dispute the existence of the debt or the amount. Rather, she claims that the proposed garnishment amount will create a financial hardship for her. As support Petitioner offers into evidence copies of her bi-weekly pay statements and proofs of payments for household, utility, medical bills and other related expenses. *Id.*

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 when raised, Petitioner "must submit `particularized evidence' in order to show financial hardship. Such evidence includes proofs of payment showing that Petitioner 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).

When considering a claim of financial hardship, the Court reviews the Petitioner's disposable income, alleged household expenses, and other supporting documentation. Under 31 C.F.R. § 285.11(c), disposable income is defined as "that part of the debtor's compensation from the employer that remains after deduction of health insurance premiums and other amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes." The Court also considers a Petitioner's essential monthly living expenses when calculating the final monthly disposable income. Payments for essential monthly household expenses are considered against the disposable income figure prior to 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 average gross monthly income is \$3812.86. On average, her monthly deductions required by law are federal income tax, \$386.76; state tax, \$178.46; medical insurance, \$59.92, that together total \$625.14. After deductions, Petitioner's monthly disposable income is \$3187.72.

Petitioner outlined the following essential monthly household expenses: mortgage, \$1742.74; children's tuition, \$1100.63; auto insurance, \$174.40; credit cards (Amex, Discover, Southwest Airlines, Prime mostly for essential expenses), \$1049.00; Health Costs (out-of-pocket for dental, counseling, hospital, Temacula Valley), \$929.00; Utilities (average): \$350.00; food (average), \$450.00. The record sufficiently supports most of the figures listed as household expenses by Petitioner, but not all. However, in cases lacking sufficient documentation, this Court has previously held that credit may be given for certain household expenses deemed essential, even in the absence of documentation, when the "financial information submitted by Petitioner ... [was found to be] generally credible...." Reed, p. 4 (citing Elva and Gilbert Loera, HUDBCA No. 03-A-CH-AWG28 (July 30, 2004)). In this case, consistent with Reed, Petitioner provided sufficient financial information for the Court to determine that the expenses identified by Petitioner qualify

as essential household expenses and are generally credible. As a result, Petitioner's essential monthly household expenses total \$5795.77.

After deducting Petitioner's total monthly expenses from her monthly disposable income of \$3187.72, Petitioner is left with a negative balance of (-\$2608.05). At the Secretary's proposed garnishment rate of 15%, the garnishment amount would be \$478.15. Adding the proposed garnishment amount to Petitioner's negative monthly balance of (-2608.05) would yield a greater negative balance of approximately (-\$3086.20) monthly. Based on this assessment, the Court has determined that authorization of the proposed garnishment amount would create a financial hardship for Petitioner and also would leave Petitioner with a consistently negative balance every month. Any unexpected additional expenses likely incurred by Petitioner would also not be sustainable.


In this case, Petitioner has met her burden of proof for financial hardship. Where there is a finding of financial hardship, the Court may downwardly adjust the garnishment amount to reflect the debtor's current financial condition. *See* 31 C.F.R. § 285.11(k)(3). While the Secretary has successfully established that the debt claimed is legally enforceable against Petitioner, a garnishment amount at any percentage of Petitioner's disposable income would, at this time, constitute a financial hardship and render collection of the subject debt a severe hardship for Petitioner if imposed.

ORDER

The stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is therefore extended indefinitely. It is hereby

ORDERED that, based on Petitioner's current financial condition, the Secretary is not authorized to seek collection of this outstanding obligation by means of administrative wage garnishment.

However, the Secretary shall not be prejudiced from seeking an administrative wage garnishment in the future, should Petitioner's financial circumstances or income change, or should Petitioner's essential household expenses decrease.

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.