

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

In the Matter of:

JAMIE FRAMPTON,

Petitioner.

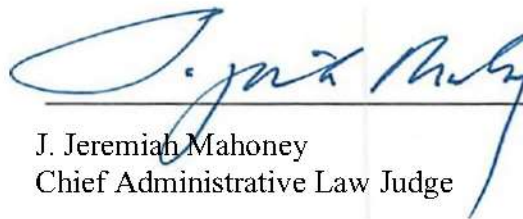
22-AM-0146-AG-098
(Claim No. 721018727)

September 25, 2024

NOTICE OF TRANSFER

Due to the retirement of Administrative Judge H. Alexander Manuel, the above-captioned matter is reassigned to Administrative Law Judge Alexander Fernández-Pons for adjudication in accord with applicable statutes and regulations.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

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

In the Matter of:

JAMIE FRAMPTON,

Petitioner.

22-AM-0146-AG-098
(Claim No. 721018727)

September 25, 2024

DECISION AND ORDER

On March 16, 2022, Jamie Frampton (“Petitioner”) filed a *Hearing Request* (“*Request*”) seeking a 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 judges of the 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.

FINDINGS OF FACT

On May 18, 2016, Petitioner executed a promissory note (“Subordinate Note”) in the principal amount of \$64,030.85. The funds secured by the Subordinate Note were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage (“Primary Note”) current, thereby providing foreclosure relief.

The terms of the Subordinate Note included Petitioner’s promise to pay, secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on the Subordinate Note. The Subordinate Note required payment on or before February 1, 2046, or when the first of the following events occurs:

- i. Petitioner has paid in full all amounts due under the Primary Note and related mortgage, deed of trust, or similar security instruments insured by the Secretary;
- ii. the maturity date of the Primary Note has been accelerated;
- iii. the Primary 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 Petitioner as his principal residence.

On or about September 28, 2020, the Primary Note was paid in full, thereby terminating the FHA insurance on that debt and causing the Subordinate Note to become due. The Secretary contends Petitioner did not, thereafter, repay the full amount of the Subordinate Note as required. The total amount due now consists of:

- i. \$63,884.72 as the unpaid principal balance as of April 30, 2022;
- ii. \$53.22 as the unpaid interest on the principal balance at 1.0% per annum through April 30, 2022; and
- iii. interest on said principal balance from May 1, 2022, at 1.0% per annum until paid.¹

Afterwards, a “Notice of Intent to Collect By Treasury Offset” dated November 22, 2021, sent by the U.S. Department of the Treasury (“Treasury”) on behalf of HUD, was received by Petitioner. Next, Petitioner received a “Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings” dated March 7, 2022, also sent by Treasury on behalf of HUD. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), both Notices afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms.

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).

As evidence of Petitioner’s indebtedness, the Secretary has filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Proposed Repayment Schedule*. Attached as exhibits thereto are a copy of the Subordinate Note and the Declaration of Brian Dillon, Director of the Asset Recovery Division in HUD’s Financial Operations Center, attesting to Petitioner’s debt. The express language of the Subordinate Note, signed and agreed to by Petitioner, states under “Borrower’s Promise to Pay,” that “[i]n return for a loan received from Lender, Borrower promises to pay the principal sum of \$64,030.85 (sixty-four thousand thirty and 85/100 dollars) to the order of the Lender.” The Subordinate Note further states, “Payment shall be made at the Office of the Housing FHA-Comptroller . . .” at an address corresponding to the address used by HUD.

Petitioner acknowledges the existence of the debt,² but there is no evidence he has repaid HUD or that HUD released him from his obligation to do so. See In re Jannette M. Bush, HUDOHA 22-AM-0158-AG-106, at 2 (Aug. 30, 2024) (finding no debt liability when there is either a written release from the lender or valuable consideration accepted by the lender as repayment) (citing In re Juanita Mason, HUDOA No. 08-H-NY-AWG70 (Dec. 8, 2008)).

¹ If found liable for the debt, Petitioner may be responsible for U.S. Department of the Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6)). Such fees may constitute around or about 30% of the amount Petitioner allegedly owes HUD.

² Petitioner also expresses concern that he was not notified of the debt when the Primary Note was paid off. However, the Tribunal lacks jurisdiction to review that issue.

Accordingly, by Petitioner's own admission and the evidence submitted by HUD under oath, both the existence and amount of the debt and that it is owed by Petitioner are established.

Thus, the Secretary seeks to garnish biweekly \$391.48 of Petitioner's disposable pay. Petitioner states he lives from paycheck to paycheck such that the Secretary's proposed payment schedule will cause him financial hardship.³ The Tribunal is permitted to downwardly adjust the Secretary's payment schedule upon a finding of financial hardship. See 31 C.F.R. § 285.11(k)(3). In order for Petitioner to show financial hardship he "must submit 'particularized evidence,' including proofs of payment, showing that he will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation." Bush at 2-3 (quoting Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985)).

In support of his claim, Petitioner completed a "Debt Resolution Program Financial Statement" (form HUD-56142), signed under penalty of law, that details his monthly expenses. Therein, Petitioner claims no financial dependents and lists monthly expenses consisting of: mortgage (\$2,321.64), groceries (\$390), electricity (\$350.00), auto payment (\$246.00), auto insurance (\$397.00), phone (\$223.00), insurance (\$34.00), gym membership (\$40.00), student loans (\$200.00), life insurance (\$181.00), and credit card debt (\$150.00). However, Petitioner provides no documentary evidence in support of these expenses. Thus, the Tribunal looks to see whether those expenses may be deemed to be essential and credible. See Bush at 3 (citing Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012) (finding that credit may be given for certain essential household expenses, despite insufficient documentation when the financial information is found to be generally credible)). Accordingly, Petitioner's expenses for mortgage, groceries, auto payment, and auto insurance are found to be essential and credible. However, the expenses for electricity and phone, while also essential, are deemed excessive and reduced to \$200 and \$100 per month, respectively.

Based on the evidence provided, Petitioner's biweekly disposable pay is \$2,609.87 and his credited monthly expenses are \$3,874.64, or \$1,788.30 biweekly. As Petitioner retains \$430.09 biweekly after each garnishment, the Tribunal finds that HUD's proposed garnishment of \$391.48 would not cause Petitioner financial hardship. Accordingly, the Secretary may garnish the lesser of \$391.48 biweekly or 15% of Petitioner's biweekly disposable pay. Should Petitioner wish to negotiate repayment terms with HUD, the Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.⁴ Petitioner may also seek reconsideration if he experiences a material change in his circumstances. See 31 C.F.R. § 285.11(k)(1).

³ Petitioner also states he spoke with a HUD representative who suggested he may be able to have the debt offset through his tax returns rather than garnishment of his disposable pay. However, collection of the debt solely through this method is not considered in the present matter as neither party has submitted evidence of Petitioner's participation.

⁴ The U.S. Department of the Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached at 1-888-826-3127.

ORDER

For the reasons set forth above, the Tribunal finds the subject debt to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

ORDERED that the Secretary is authorized to seek administrative wage garnishment in the biweekly amount of \$391.48 of Petitioner's disposable pay or 15% of Petitioner's disposable pay, whichever is less, or such other amount as determined by the Secretary, not to exceed either of the aforementioned amounts. It is

FURTHER 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**.

SO ORDERED,

ALEXANDER

FERNANDEZ-PONS

Digitally signed by: ALEXANDER FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-PONS C
= US O = U.S. Government OU = Department of
Housing and Urban Development, Office of the
Secretary
Date: 2024.09.25 10:23:57 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. § 701 *et seq.*).