

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

In the Matter of:

ELBONY RODRIGUEZ,

Petitioner.

22-AM-0177-AG-115  
(Claim No. 721018835)

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

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**DECISION AND ORDER**

On May 27, 2022, Elbony Rodriguez (“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 July 10, 2017, Petitioner executed a promissory note (“Subordinate Note”) in the principal amount of \$39,452.65. 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 May 1, 2047, 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 her principal residence.

On or about August 26, 2020, the Primary Note was paid in full when Petitioner sold her home. Thus, the FHA insurance on that debt was terminated, 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. \$33,280.50 as the unpaid principal balance as of July 31, 2022;
- ii. \$83.16 as the unpaid interest on the principal balance at 1.0% per annum through July 31, 2022; and
- iii. interest on said principal balance from August 1, 2022, at 1.0% per annum until paid.<sup>1</sup>

A “Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings” (“Notice”) dated April 5, 2022, sent by the U.S. Department of the Treasury on behalf of HUD was received by Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice 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*. Attached as exhibits thereto are a copy of the Subordinate Note and the Declaration of Gary Sautter, Acting Director of the Asset Recovery Division in HUD’s Financial Operations Center, attesting to Petitioner’s debt. In addition, 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 from Lender, Borrower promises to pay the principal sum of thirty-nine thousand four hundred fifty-two dollars and 65 cents (U.S. \$39,452.65), to the order of the Lender.” (emphasis removed). The Subordinate Note further states, “Payment shall be made at the U.S. Department of HUD . . . .” (emphasis removed).

Petitioner acknowledges the existence of the debt,<sup>2</sup> but there is no evidence she has paid the amount owed to HUD or that HUD released her from her 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.

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<sup>1</sup> The Secretary further states that no unpaid penalties were owed as of July 31, 2022, and no unpaid administrative costs were owed as of June 30, 2022. However, if found liable for the debt, Petitioner may also 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.

<sup>2</sup> Petitioner also expresses concern that she was not notified of the debt when she sold her house. However, the Tribunal lacks jurisdiction to review that issue.

8, 2008)). Accordingly, the evidence submitted by HUD under oath establishes the existence and amount of the debt and that it is owed by Petitioner.

Having established the debt, the Secretary seeks to garnish biweekly \$475.96 of Petitioner's disposable pay. Petitioner claims the proposed garnishment will cause her financial hardship. 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 she "must submit 'particularized evidence,' including proofs of payment, showing that [she] 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 her claim, Petitioner, who states she supports five (5) dependents including herself, provides an itemized list of monthly expenses signed under penalty of law. Of those expenses, Petitioner submits documentary evidence of the following: mortgage (\$2,030.07), electricity (\$102.00), heat (\$73.82), utilities (\$63.92), auto insurance (\$109.79), cellular phone (\$50.00), Internet access (\$79.68), and credit card debt (\$77.00). Other itemized expenses including groceries (\$1,200.00), auto payment (\$529.00), gas (\$200.00), tolls (\$25.00), and an expense designated "other" (\$100.00) lack such evidence. With the exception of the expense designated "other," these undocumented expenses are deemed to be essential and found to be credible based on the size of Petitioner's household.<sup>3</sup> 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)).

Based on the evidence provided, Petitioner's biweekly disposable pay is \$3,173.11 and her credited monthly expenses are \$4,890.28, or \$2,257.05 biweekly. As Petitioner retains \$440.10 after each garnishment, the Tribunal finds that HUD's proposed biweekly garnishment of \$475.96 would not cause Petitioner financial hardship. Accordingly, the Secretary may garnish the lesser of \$475.96 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.<sup>4</sup> Petitioner may also seek reconsideration if she experiences a material change in her circumstances. See 31 C.F.R. § 285.11(k)(1).

## 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:

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<sup>3</sup> See Internal Revenue Service, National Standards: Food, Clothing and Other Items, (<https://www.irs.gov/businesses/small-businesses-self-employed/national-standards-food-clothing-and-other-items>) (last updated Aug. 22, 2024).

<sup>4</sup> 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.

**ORDERED** that the Secretary is authorized to seek administrative wage garnishment in the biweekly amount of \$475.96 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 10:26:27 -04'00'

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Alexander Fernández-Pons  
Administrative Law Judge

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**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.).