

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

In the Matter of:

LAWRENCE GARRETT AND WILMA GARRETT,  
  
Petitioner.

22-AM-0183-AG-119  
(Claim No. 721015849)

July 23, 2024

**DECISION AND ORDER**

On July 11, 2022, Lawrence Garrett and Wilma Garrett (“Petitioners”) 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 August 23, 2010, Petitioners executed and delivered a Subordinate Note in favor of the Secretary in the principal amount of \$10,593.00. The funds secured by the Subordinate Note were paid by the Secretary to Petitioners’ primary mortgage lender to bring Petitioners’ mortgage (“Primary Note”) current to provide foreclosure relief.

The terms of the Subordinate Note included Petitioners’ promise to pay, secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioners defaulted on the Subordinate Note. The Subordinate Note required payment on or before June 1, 2019, or when the first of the following events occurs:

- i. Petitioners have 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 Petitioners as their primary residence.

On or about May 25, 2019, the FHA mortgage insurance on Petitioners' primary mortgage was terminated, as the lender indicated that the primary mortgage matured. Thus, the Subordinate Note also matured by operation of its terms. The total amount due now consists of:

- i. \$6,054.05 as the unpaid principal balance as of July 31, 2022;
- ii. \$10.08 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 June 14, 2021, sent by the U.S. Department of Treasury on behalf of HUD was received by Mr. Garrett. Another Notice, dated January 5, 2022, was received by Mrs. Garrett. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), each Notice afforded Petitioners the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms.

HUD seeks to garnish 15% of Petitioners' disposable pay. In February 2022, wage garnishment orders were sent to Petitioners' employers. Subsequently, a total of \$1,994.50 was garnished.<sup>2</sup>

## 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 an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioners' indebtedness, the Secretary has filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* together with the Declaration of Brian Dillon, a copy of each Petitioner's pay stub, and a copy of the Subordinate Note signed by Petitioners. The express language of the Subordinate Note, signed and agreed to by Petitioners, 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 ten thousand five hundred ninety three dollars and no cents (US \$10,593.00), to the order of the Lender." (emphasis removed). The Subordinate Note further states that payment will be made to HUD in the care of C&L Service Corporation, Tulsa, Oklahoma. In response, Petitioners provide no evidence to refute that put forward by the Secretary, such as a release from HUD. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at p. 3 (December 8, 2008) ("... [F]or Petitioner not to be held liable for the debt, there must either be a release in writing from the lender... or valuable

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<sup>1</sup> If found liable for the debt, Petitioners may also be responsible for U.S. Department of Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6). Such fees may constitute 30% of the amount Petitioners allegedly owe HUD.

<sup>2</sup> HUD discovered that both Petitioners' employers miscalculated the garnishment. HUD unsuccessfully attempted to contact Petitioners regarding this error.

consideration accepted by the lender from Petitioner....”) (citations omitted). Accordingly, the copy of the Subordinate Note submitted by HUD under oath establishes the existence and amount of the debt and that it is owed by Petitioners.

Petitioners claim that the Secretary’s proposed garnishments would cause them financial hardship. 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 24 C.F.R. § 285.11(k)(3) provides that if financial hardship is found this Tribunal may downwardly adjust the garnishment amount to reflect the debtor’s financial condition. In order for Petitioners to show financial hardship, they “must submit ‘particularized evidence,’ including proofs of payment, showing that [they] 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 (Mar. 27, 1985).

In support of their claim, Petitioners submitted copies of their pay stubs, as well as a Consumer Debtor Financial Statement signed by each of them under penalty of perjury. In their Financial Statement, Petitioners list the following monthly household expenses: \$673 (car payment), \$600 (gas/auto repairs), \$300 (electricity), \$650 (food), \$89 (cable), \$450 (out-of-pocket medical expenses), \$300 (clothing), \$70 (trash), \$154 (auto insurance), \$200 (cell phone), and \$250 (home insurance). Petitioners also list monthly payments totaling \$214 to credit card debt.

Petitioners provided proof of their household expenses for car payment, electricity, cable, trash, auto insurance, cell phone, and home insurance. Gas/auto repairs, food, out-of-pocket medical expenses, and clothing do not have corresponding proof. However, where there is insufficient documentation, credit may be given for certain essential subsistence expenses that are found to be generally credible. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012). While those remaining expenses are found to be essential, three of those expenses, gas/auto repairs, out-of-pocket medical expenses, and clothing, are also found to be excessive. Therefore, those expenses are reduced to \$292, \$166, \$157, respectively for the purpose of the Tribunal’s analysis.<sup>3</sup>

A review of Petitioners’ essential monthly expenses reveals that the Secretary’s proposed garnishment payment schedule will not cause Petitioners financial hardship. Specifically, deducting their essential monthly expenses (totaling \$3,215.00) plus the proposed 15% garnishment (totaling \$332.75) from their monthly disposable pay (\$4,436.56) leaves them with approximately \$889.00 per month. Accordingly, the Secretary may garnish Petitioners’ disposable pay proposed.

Should Petitioners wish to negotiate repayment terms with the HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD.<sup>4</sup> Petitioners are entitled to seek reassessment of the repayment schedule in the future

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<sup>3</sup> Internal Revenue Service, *Collection Financial Standards* (Apr. 22, 2024), <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>.

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

in the event they experience materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).

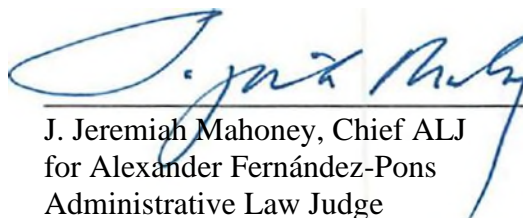
### **ORDER**

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

**ORDERED** that the Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioners' disposable pay, or such other amount as determined by the Secretary, not to exceed 15% of Petitioners' disposable pay. 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,**

  
J. Jeremiah Mahoney, Chief ALJ  
for 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.).