

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

In the Matter of:

ARTHUR SOLTERO,

Petitioner.

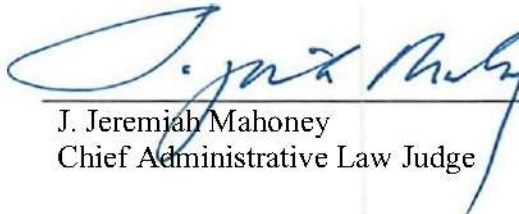
22-AM-0200-AG-128
(Claim No. 780816820)

October 9, 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 the applicable statutes and regulations.

SO ORDERED,



J. Jeremiah Mahoney
Chief Administrative Law Judge

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DECISION AND ORDER

On August 22, 2022, Arthur Soltero (“Petitioner”) filed a *Hearing Request* seeking a hearing concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the United States 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 garnishment as a mechanism for the collection of debts owed to the United States government.

The Secretary of HUD has designated the judges of this Office of Hearings and Appeals (“Tribunal”) 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 in 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

FINDINGS OF FACT

On September 3, 2019, Petitioner executed and delivered a Mechanic’s Lien Note II (“Note”) to the Veterans Land Board of the State of Texas (“Board”) in the principal amount of \$24,997.14. Petitioner defaulted on the Note. The Board subsequently assigned the Note to HUD. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$21,037.38 as the unpaid principal balance as of September 8, 2022;
- ii. \$4.67 as the unpaid interest on the principal balance at 1% per annum through September 8, 2022;
- iii. \$0.00 as the unpaid penalties and administrative costs as of September 8, 2022; and
- iv. interest on said principal balance from September 9, 2022, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated January 26, 2022, was sent to 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. While Petitioner does not dispute that he is indebted to HUD, he has not entered into a written repayment agreement with HUD.

APPLICABLE LAW

The agency bears the initial burden of proof to show the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). A petitioner, thereafter, may 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(f)(8)(ii).

A petitioner may also present evidence that the terms of the proposed repayment schedule would cause financial hardship to the petitioner. *Id.* To determine if garnishment will cause a financial hardship, a petitioner's essential expenses are considered against the petitioner's disposable income. Tiffany Weber, HUDOA No. 22-VH-0024-AG-020 (Apr. 19, 2023). A showing of financial hardship does not invalidate a debt or release a debtor from a legal obligation to repay it. Ronnie E. Chavis, HUDOA No. 19-AM-0213-AG-066 (July 24, 2020) (citing Raymond Kovalski, HUDOA No. 87-1681-G18 (Dec. 8, 1986)). However, if financial hardship is found, this Tribunal may downwardly adjust the garnishment amount to reflect a petitioner's financial condition. 24 C.F.R. § 285.11(k)(3).

DISCUSSION

As evidence of Petitioner's indebtedness, the Secretary filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* ("Secretary's Statement"). Attached as exhibits to the *Secretary's Statement* are a copy of the Note and the Declaration of Brian Dillon, Director of the Asset Recovery Division in HUD's Financial Operations Center. The *Secretary's Statement* proposes a biweekly wage garnishment repayment schedule of 15% of Petitioner's disposable income.

Petitioner does not contest the existence of the debt or that the remaining debt is past due. Rather, Petitioner counters that the proposed repayment schedule will cause him financial hardship. For Petitioner to show financial hardship he "must submit 'particularized evidence,' including proofs of payment, showing that [Petitioner] will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation." Thalia Kelly, HUDOA No. 17-VH-0161-AG-043 (Nov. 16, 2018) (citing Ray J. Jones, HUDOA 84-1-OA at 2 (Mar. 27, 1985)).

In support of his financial hardship claim, Petitioner submits two of his biweekly pay statements and two of his spouse's biweekly pay statements. Based on these submissions, Petitioner's monthly disposable pay is approximately \$4,881.31. And Petitioner's spouse's monthly disposable pay is approximately \$4,767.30. The evidence reflects that Petitioner and his spouse's monthly disposable pay combined is approximately \$9,648.61.¹

To prove his monthly expenses, Petitioner submitted a Financial Disclosure Statement, and a Consumer Debtor Financial Statement.² Petitioner also submitted bills or other documentation substantiating his claimed monthly expenses of: \$1,370.18 (rent), \$185.92 (home

¹ Petitioner represents that he and his spouse share responsibility for paying their essential expenses. Accordingly, the Tribunal will consider his spouse's expenses and income in its review. However, HUD is not authorized by this *Decision and Order* to garnish Petitioner's spouse's income.

² Petitioner represents that he has five dependents.

insurance), \$198.94 (cell phones), \$60.32 (internet), \$48.42 (phone), \$144.96 (water and sewer), \$38.63 (gas), \$270.29 (electric), \$299.25 (car insurance), \$60.72 (home security services), and \$100.00 (medical).

In addition, Petitioner claims to have monthly expenses including: \$1,000.00 (food), \$460.00 (gasoline and car repairs), \$270.00 (clothing), \$83.34 (cable television), \$166.67 (school supplies), and \$200.00 (housekeeping and personal care). These expenses were not supported with particularized evidence such as bill or receipts. Nevertheless, Petitioner's food, gasoline, car repairs, clothing, school supplies, housekeeping, and personal care expenses are found to be generally credible and may be included in the Tribunal's financial hardship calculations. See Dana Bynum, HUDOA No. 22-AM-0061-AG-044 (Nov. 21, 2023) (citing Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012)) ("[C]redit may be given for certain essential subsistence expenses, despite insufficient documentation when the financial information is found to be generally credible."). Petitioner's alleged cable television expenses, however, will not be considered essential because Petitioner has not provided receipts to prove these expenses and has not explained how these expenses are essential to Petitioner's household. See Thalia Kelly, HUDOA No. 17-VH-0161-AG-043, at 3 (Nov. 16, 2018) (Cable expenses considered nonessential.).

Based on the foregoing, Petitioner and his spouse's essential household expenses total about \$4,874.30 monthly. Their combined disposable income of \$9,648.61 less a 15% garnishment of Petitioner's disposable pay or \$732.20, would leave them with approximately \$8,916.41 per month. After deducting their monthly household expenses, Petitioner's household is left with a few thousand dollars to cover any expenses that were not substantiated or that were not deemed essential for the purposes of a financial hardship calculation. Therefore, Petitioner has failed to prove that the Secretary's proposed garnishment repayment schedule of 15% would cause Petitioner financial hardship. Accordingly, the Tribunal finds that the Secretary is authorized to garnish up to 15% of Petitioner's disposable pay.

Should Petitioner wish to negotiate repayment terms with HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.³ Petitioner is entitled to seek reassessment of the repayment schedule in the future if he experiences materially changed financial circumstances. 31 C.F.R. § 285.11(k).

ORDER

For the reasons set forth above, the Tribunal finds the debt that is the subject of this proceeding 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 from Petitioner in the amount of 15% of Petitioner's disposable income as determined in this

³ 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.

Decision and Order, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month. It is:

FURTHER ORDERED that the *Notice of Docketing, Order, and Stay of Referral* 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: 2024.10.09 13:14:42 -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.).