

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

In the Matter of:

ANGELA WEAVER,

Petitioner.

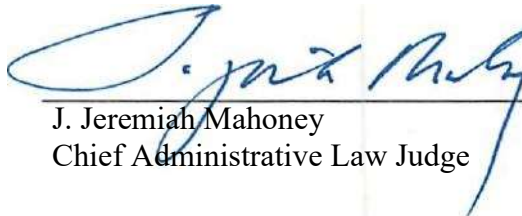
22-AM-0204-AG-132
(Claim No. 721014973)

October 28, 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

Angela Weaver (“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 August 17, 2017, Petitioner executed a Partial Claims Promissory Note (“Note”) in the principal amount of \$44,163.82. In exchange for the executed Note, HUD advanced funds to Petitioner’s Federal Housing Administration (“FHA”) insured mortgage lender as a means of providing foreclosure relief to Petitioner.

On or about November 5, 2018, the Note became due when the FHA mortgage insurance on Petitioner’s primary mortgage was terminated. The Secretary is the holder of the Note and alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$39,682.61 as the unpaid principal balance as of September 30, 2022;
- ii. \$330.60 as the unpaid interest on the principal balance at 1% per annum through September 30, 2022;
- iii. \$2599.99 as the unpaid penalties and administrative costs through September 30, 2022; and
- iv. interest on said principal balance from October 1, 2022, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated July 4, 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 she is indebted to HUD, she 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 financial hardship, a petitioner’s essential expenses are considered against the petitioner’s disposable income. *Tiffany Weber*, HUDOA No. 22-VH-0024-AG-020 at 3 (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 at 3 (July 24, 2020). However, if financial hardship is found, this Tribunal may downwardly adjust the garnishment amount to reflect a petitioner’s financial condition. 31 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 her financial hardship. For Petitioner to show financial hardship she “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 at 2 (Nov. 16, 2018).

In support of her financial hardship claim, Petitioner submits two of her biweekly pay statements and two of her spouse’s biweekly pay statements. Based on these submissions, Petitioner’s monthly disposable pay is approximately \$3,908.00. And Petitioner’s spouse’s monthly disposable pay is approximately \$3,628.47. The evidence reflects that Petitioner and her spouse’s monthly disposable pay combined is approximately \$7,536.47.¹

¹ Petitioner represents that she and her spouse share responsibility for paying their essential expenses. Accordingly, the Tribunal will consider her 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.

To prove her essential expenses, Petitioner submitted a letter and a Consumer Debtor Financial Statement. Petitioner also submitted documentation claiming monthly essential expenses of: \$1,200.00 (rent), \$250.00 (electric), \$120.00 (water, gas, and sewer), \$8.34 (trash), \$109.28 (internet), \$81.31 (cable), \$215.28 (cell phones), \$130.00 (Internal Revenue Service debt), \$300.00 (gasoline), \$928.00 (groceries), \$162.22 (car insurance), \$134.57 (home insurance), \$25.00 (vehicle tags), \$91.67 (property tax), \$404.72 (medical), \$303.00 (lawn care), \$16.67 (HOA dues), \$4.16 (fire department dues), \$110.48 (appliances and furniture), \$84.75 (laptops), \$1,146.00 (car payments), \$680.00 (credit card payments), and \$257.00 (unsecured finance loans).

Petitioner's alleged cable, laptops, and lawn care expenses will not be considered essential because Petitioner has not provided particularized evidence, such as bills or 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). The Tribunal will also exclude Petitioner's credit card payments and unsecured finance loans from its review because Petitioner provides no particularized evidence that these debts were incurred for essential expenses. Steven Davis, HUDOA No. 20-VH-0045-AG-024 at 5 (Sep. 1, 2021) (“[W]ithout an evidentiary showing that these debts were incurred for the purchase of necessities, credit will not be given to Petitioner for those obligations.”).

Petitioner's remaining monthly expenses for rent, electric, water, gas, sewer, trash, internet, cell phones, the Internal Revenue Service debt, gasoline, groceries, car insurance, home insurance, vehicle tags, property tax, medical, HOA dues, fire department dues, appliances, furniture, and car payments are not supported by particularized evidence. Even if the Tribunal considered the expenses discussed in this paragraph in a financial hardship analysis, Petitioner has not established financial hardship because Petitioner's monthly household income exceeds these claimed essential monthly expenses by more than one-thousand dollars. 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.² Petitioner is entitled to seek reassessment of the repayment schedule in the future if she 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

² The U.S. Department of the Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting HUD Counsel assigned to this matter.

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,



FOR: 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.).