

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

In the Matter of:

DERRICK BYRD,

Petitioner.

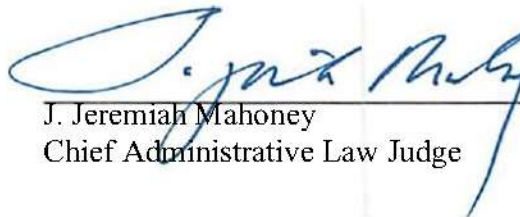
23-AM-0001-AG-001  
(Claim No. 780822075)

September 30, 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 October 6, 2022, Derrick Byrd (“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 November 23, 2015, Petitioner executed and delivered a Consumer Loan Note and Security Agreement (“Note”) to Vanderbilt Mortgage and Finance, Inc. (“Vanderbilt”) in the principal amount of \$60,995.60, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703.

Petitioner failed to make payments on the Note as agreed. On March 8, 2022, Vanderbilt assigned the Note to the United States of America, and the Secretary is the holder of the Note. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$23,772.81 as the unpaid principal balance as of October 30, 2022;
- ii. \$1,545.77 as the unpaid interest on the principal balance at 1% per annum through October 30, 2022;
- iii. \$1,567.83 as the unpaid penalties and administrative costs as of October 30, 2022; and
- iv. interest on said principal balance from November 1, 2022, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”), dated September 5, 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 (April 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).

A petitioner may also present evidence that the terms of a proposed repayment schedule are unlawful. 31 C.F.R. § 285.11(f)(8)(ii). A proposed repayment schedule is unlawful if, for example, the amount to be garnished is more than 15% of a petitioner’s disposable pay. *See* 31 C.F.R. § 285.11(i)(2)(i)(A).

### **DISCUSSION**

As evidence of Petitioner’s indebtedness, the Secretary filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable and Secretary’s Proposed Repayment Schedule* (“*Secretary’s Statement*”). Attached as exhibits to the *Secretary’s Statement* are a copy of the Note, a copy of the Assignment of Contract, dated March 8, 2022, and the Declaration of Brian Dillon, Director of the Asset Recovery Division in HUD’s Financial Operations Center. The Note, signed and agreed to by Petitioner, states under “Promise to Pay,” that, “[i]n return for a loan received Borrower promises to pay U.S. \$60,995.60 . . . , plus interest, to the order of Lender.” The Note further states, “‘Lender’ refers to Vanderbilt... and its successors and assigns.”

Petitioner failed to make payments on the Note as agreed. In accordance with 24 C.F.R. § 201.54, Vanderbilt assigned the Note to the United States of America, and the Secretary is the

holder of the Note. As Petitioner does not contest the existence of the debt or that the remaining debt is past due, he is liable to repay the Secretary the full amount of the remaining debt.<sup>1</sup>

Although Petitioner does not dispute the existence of the debt, 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 three of his pay statements, and a pay statement from his fiancé. Based on these submissions, Petitioner’s monthly disposable is approximately \$1,653.41 based on his income and deductions from January 1, 2022, through September 2, 2022. Petitioner’s fiancé’s monthly disposable pay is approximately \$2,257.68 based on her pay statement from October 17, 2022, through October 23, 2022. The evidence reflects that Petitioner and his fiancé’s monthly disposable pay combined is approximately \$3,911.09.<sup>2</sup>

To prove his monthly expenses, Petitioner submitted a Consumer Debtor Financial Statement, and a Debt Resolution Program Financial Statement. Petitioner also submitted bills or other documentation substantiating his claimed monthly expenses of: \$695.00 (rent), \$104.91 (electric), \$54.99 (Internet), \$111.30 (phone),<sup>3</sup> \$446.34 (car payment), \$187.87 (car insurance), and \$330.00 (child support).<sup>4</sup>

In addition, Petitioner claims to have monthly expenses including: \$680.00 (food), \$193.00 (medical), \$189.00 (clothing), \$192.00 (chiropractor), \$220.00 (clinic), and \$590.00 (gas and car repairs). These expenses were not supported with particularized evidence such as bill or receipts. Nevertheless, Petitioner’s food, medical, and clothing 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.”). Similarly, although Petitioner has not provided an explanation or documentation for the alleged gas and car repairs expenses, the Tribunal will

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<sup>1</sup> Petitioner 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 Petitioner allegedly owes HUD and are collected by the U.S. Department of Treasury.

<sup>2</sup> Petitioner represents that he and his fiancé share responsibility for paying their essential subsistence costs. Accordingly, the Tribunal will consider his fiancé’s expenses and income in its review. However, HUD may not garnish Petitioner’s fiancé’s income.

<sup>3</sup> Petitioner’s phone bill includes expenses attributable to John Roberts, without explanation as to their relationship or how those expenses are essential to Petitioner’s household. Therefore, such expenses will not be considered in the Tribunal’s review.

<sup>4</sup> Petitioner provides proof that he must make monthly child support payments of \$330.00. Petitioner also shows that he is \$2,464.12 in arrears. Petitioner represented that he would pay \$190.00 a week to satisfy the arrears. Based on Petitioner’s representation, Petitioner should have paid off the child support arrears in 2023. Accordingly, the arrearage of \$2,464.12 was not included in the Tribunal’s calculations.



include \$260 of the alleged gas and car repairs expenses in the financial hardship calculations.<sup>5</sup> See Steven Davis, HUDOA No. 20-VH-0045-AG-024, at 5 (Sep. 1, 2021).

Petitioner's alleged chiropractor and clinic expenses, however, will not be considered essential expenses because Petitioner has not provided bills or receipts to prove the existence of these expenses. See Thalia Kelly, HUDOA No. 17-VH-0161-AG-043, at 2 (Nov. 16, 2018) (Petitioner must submit "particularized evidence" to prove financial hardship.). The Tribunal will also exclude Petitioner's debt of \$666.00 to South Carolina State Credit Union, because Petitioner provides no particularized evidence that this debt was incurred for essential household expenses. See 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.")

Based on the foregoing, Petitioner and his fiancé's essential household expenses total about \$3,252.41 monthly. Their combined disposable income of \$3,911.09 less a 15% garnishment of Petitioner's disposable pay or \$248.01, would leave them with approximately \$3,663.08 per month. After deducting their monthly household expenses, Petitioner's household is left with a little over \$400 to cover any expenses that were not substantiated or that were not deemed essential for the purposes of a financial hardship calculation. Therefore, the Secretary's proposed garnishment repayment schedule of 15% would not cause Petitioner financial hardship.<sup>6</sup> 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.<sup>7</sup> 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

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<sup>5</sup> The Internal Revenue Service estimates that the cost of operating a one car in the South Region amounts to \$260. See Local standards: Transportation, 2024, <https://www.irs.gov/businesses/small-businesses-self-employed/local-standards-transportation>.

<sup>6</sup> The Secretary proposed garnishment at a rate of 15% and claimed that amount to be \$135.95 per week, which exceeds the Tribunal's calculation of 15% of Petitioner's disposable pay. See 31 C.F.R. § 285.11(i)(2)(i)(A) (providing that garnishment cannot exceed 15% of a debtor's disposable income)


<sup>7</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.

*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: 2024.09.27 12:01:06 -0400

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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.).