

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

In the Matter of:

AMBER YOUNG,

Petitioner.

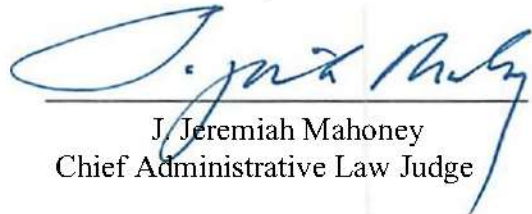
23-AM-0024-AG-014
(Claim No. 721016948)

July 16, 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 December 9, 2022, Amber Young (“Petitioner”) filed a *Request for Hearing* (“Request”) 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 this 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

Petitioner procured an FHA-insured mortgage on her primary property (“Primary Note”). To prevent foreclosure, HUD advanced funds to Petitioner’s lender to bring the primary note current. In exchange for foreclosure relief, on January 30, 2018, Petitioner executed and delivered a Partial Claim Promissory Note (“Subordinate Note”) to HUD in the amount of \$28,993.38. The terms of the Subordinate Note provide that the balance would be due when the existing mortgage was paid in full.

The terms of the Subordinate Note included Petitioner’s promise to pay which was secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on the Subordinate Note. Additionally, the Subordinate Note requires payment (see “Manner of Payment”) on or before February 1, 2048, or when the first of the following events occur:

- i. borrower has paid in full all amounts due under the Primary Note and related mortgage, deed of trust, or similar security instrument 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 the purchaser as her primary residence.

On November 8, 2019, HUD received notice that the mortgage was paid in full, which made the Subordinate Note immediately due and payable to HUD. However, Petitioner did not repay the Subordinate Note as required. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$20,941.11 as the unpaid principal balance as of December 30, 2022;
- ii. \$244.37 as the unpaid interest on the principal balance at 2.0% per annum through December 30, 2022;
- iii. \$1,298.98 as the unpaid penalties and administrative costs as of December 30, 2022; and
- iv. interest on said principal balance from December 31, 2022, at 1.0% per annum until paid.

A “*Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings*” (“Notice”) dated October 20, 2022, was sent to Petitioner at her last known address. 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. Petitioner has not entered into a written repayment agreement.

A Wage Garnishment Order was issued to Petitioner’s employer on November 22, 2022. Based on the issuance of the Wage Garnishment Order, Petitioner’s wages have been garnished three times. The three garnishments are as follows: \$219.31 on December 14, 2022, \$207.70 on January 5, 2023, and \$157.79 on January 10, 2023.

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

As evidence of Petitioner’s indebtedness, the Secretary has filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable* (“Secretary’s Statement”), together with a copy of the Subordinate Note signed by Petitioner and the sworn Declaration of Gary Sautter. Accordingly, the Tribunal finds that the Secretary has met her initial burden of proof.

The Secretary contends that a repayment schedule of 10% of Petitioner’s disposable income will not cause Petitioner financial hardship. Petitioner does not dispute the existence or

amount of the debt. Rather, Petitioner claims that the Secretary's proposed garnishment amount would create a financial hardship.

Pursuant to 31 C.F.R. § 285.11(i)(2)(A), the Secretary is authorized to collect up to 15% of Petitioner's disposable pay. However, in appropriate cases where Petitioner makes a showing of financial hardship, this Tribunal has the discretion to modify the Secretary's proposed repayment schedule. 31 C.F.R. § 285.11(f)(8)(ii). A showing of financial hardship requires Petitioner to, "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." Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985).

In support of her position, Petitioner includes copies of her residential lease agreement, billing receipts for electricity, water, and cellular, and a Consumer Debtor Financial Statement ("Financial Statement") that was signed under penalty of perjury. Petitioner's evidence indicates Petitioner has the following essential monthly household expenses: \$1,300 (rent), \$140 (electricity), \$85 (water), \$157 (cellular service), \$250 (food), and \$150 (clothing). Credit may be given for certain essential subsistence expenses, despite insufficient documentation when the financial information is found to be generally credible. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012). Therefore, Petitioner's expenses for food and clothing, which were not substantiated by documentary evidence, are still found to be essential and credible.

Petitioner also lists the following monthly household expenses in her Financial Statement: \$621 (car payment), \$80 (gasoline, auto repairs), \$30 (cable, satellite TV), \$100 (out-of-pocket medical expense), \$180 (car insurance), \$6.10 (vision insurance), and \$15.84 (dental insurance). However, such expenses have not been substantiated by documentary evidence and will thus be excluded from the calculation of Petitioner's monthly household expenses for the purposes of determining financial hardship. See Charles R. Chumley, HUDOA No. 09-M-CH-AWG09 (Apr. 6, 2009); Richard Johnican, HUDOA No. 09-H-CH-AWG07 (Feb. 9, 2009). Accordingly, the Tribunal finds Petitioner's total monthly expenses to be \$2,082.00.

As for Petitioner's monthly disposable income, Petitioner provides copies of her biweekly pay statements from Franciscan Missionaries of Our Lady Health System over the course of four pay periods. The pay statements reflect an average gross pay of \$3,473.39, less deductions for Social Security, Medicare, and State Income Tax, leaves Petitioner with an average monthly disposable pay of \$3,028.62. Petitioner also lists her two teenage children as dependents living in the household and indicates she receives \$700 per month for child support. Accordingly, Petitioner's monthly household income totals \$3,728.62.

A review of Petitioner's essential monthly expenses reveals that the Secretary's proposed garnishment repayment schedule will not cause Petitioner financial hardship. Petitioner's monthly disposable income of \$3,028.62, plus the \$700 she receives in child support per month, less her essential monthly expenses of \$2,082.00, leaves Petitioner with a remaining balance of \$1,646.62. The Secretary's proposed garnishment of 10% of Petitioner's disposable income per month, or roughly \$302.86, would leave Petitioner with \$1,343.76 per month to cover additional essential household expenses that were not identified or that will be unforeseen. Accordingly, the Secretary may garnish 10% of Petitioner's disposable pay.

Should Petitioner wish to negotiate repayment terms with the Department, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.¹ However, Petitioner is entitled to seek reassessment the repayment schedule in the future in the event that she experiences materially changed financial circumstances. See 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 in the amount of 10% of Petitioner's disposable income per month, or such other amount as determined by the Secretary, not to exceed 10% of Petitioner's disposable income per month. It is

FURTHER ORDERED that the Order imposing the *Stay of Referral* on 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
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Alexander Fernández-Pons
Administrative Law Judge

¹ The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting the HUD attorney assigned to this case.

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.).