

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

In the Matter of:

John Tipton,

Petitioner.

23-VH-0153-AO-083

721020242

September 12, 2024

DECISION AND ORDER

This proceeding is before the Tribunal upon a *Request for Hearing (Hearing Request)* filed on August 24, 2023, by John Tipton (“Petitioner”) concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

JURISDICTION

The administrative judges of this Tribunal have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Thereafter, Petitioner must 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). In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.*

PROCEDURAL HISTORY

Pursuant to 31 C.F.R. § 285.11(f)(4), on August 28, 2023, this Tribunal stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”)*) at 2. On October 12, 2023, the Secretary filed her *Statement (Sec’y. Stat.)* along with documentation in support of her position. In response to the Secretary, Petitioner filed a written *Statement* along with documentary evidence in support of his position on February 22, 2024. This case is now ripe for review.

FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

According to the Secretary, in or about January 2021, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current.

In exchange for foreclosure relief, on January 13, 2021, Petitioner executed a Promissory Note ("Note") in the amount of \$8,206.66 in favor of the Secretary. Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. On or about March 18, 2022, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full as noted in ¶¶ 4(A)(i) & (iii) of the Note.

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as [HUD] may designate in writing by notice to Borrower.

Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts through September 14, 2023:

- (a) \$8,206.66 as the unpaid principal balance;
- (b) \$47.88 as the unpaid interest on the principal balance at 1% per annum;
- (c) \$98.52 as the unpaid penalties and administrative costs on the balance through September 14, 2023; and
- (d) Interest on said principal balance from September 15, 2023 at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated June 20, 2023 ("Notice") was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioner did not enter into a written repayment agreement in response to the Notice. (Id. at ¶ 7).

The Secretary further states that the U.S. Department of the Treasury issued a Wage Garnishment Order to Petitioner's employer on July 24, 2023. As a result, Petitioner's wages have been garnished six times through September 26, 2023, in the total amount of \$873.19. The first

four garnishments are reflected in the balance in paragraph 9, above, while the two most recent garnishments of \$145.53 have not yet been transmitted to HUD from the Department of Treasury.

HUD reviewed Petitioner's weekly pay statement for the pay period ending August 27, 2023. This pay statement indicates that Petitioner's gross pay totaled \$1,153.85, less allowable deductions of \$183.61 (Federal Income Tax \$95.35; FICA - Medicare \$16; FICA - OASDI \$71.53) resulting in a weekly net disposable pay of \$970.24. Based on this pay statement, the Secretary proposed an administrative wage garnishment authorized at 15% of Petitioner's disposable pay would result in a weekly repayment schedule under such garnishment order equal to \$145.54.

Based on the foregoing, the Secretary requests that the Court find Petitioner's debt past due and legally enforceable and the Secretary's proposed repayment schedule fair.

DISCUSSION

Petitioner argues that he does not owe the subject debt because it was allegedly paid in full at settlement when he sold his home. Petitioner claims in his *Statement* that "I was under the assumption that the loan was to be paid off when I sold the property. I sent in all the documentation from the closing plus the penny mac pay off. I understand now that it was in fact not paid off and I am responsible." As support, Petitioner offers into evidence a copy of a payoff statement from the PennyMac Loan Services LLC, the primary lender, to prove that he did not owe the amount claimed by the Secretary and that the debt was not past due.

Upon review, this Tribunal has determined that Petitioner has failed to meet his burden of proof regarding the amount of the subject debt and the past due status of the same. While Petitioner states that the primary lender should have paid the subject debt during settlement, such assumption is in error. Petitioner is primarily responsible for the subject debt regardless of the action or inaction of the primary mortgage lender. For Petitioner not to be held liable, he should have produced either a release in writing directly from HUD in which HUD explicitly states that Petitioner is relieved from his obligation to pay under the terms of the Note, or, in the absence of such proof, Petitioner must produce evidence of "valuable consideration accepted by the lender" of the subject debt (herein HUD) that indicates HUD's intent to release Petitioner. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner has failed to produce either in this case. The onus falls on Petitioner, not on PennyMac Loan Services LLC, to produce evidence that the subject debt amount is in error or not past due. Without such evidence, Petitioner is responsible for full payment.

This Tribunal has consistently maintained that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, consistent with case law precedent, this Tribunal must find that Petitioner remains obligated to pay the subject debt.


Next, Petitioner argues in his *Statement* that "I can not [sic] afford this at this time, my medical bills and medication take a toll on my finances in itself. I am asking for any kind of mercy

or help from the court to not continue the garnishment of my wages but instead please work with me on a solution that we all can agree upon.” Based on Petitioner’s own admission, and an assessment of the record, Petitioner is responsible for the subject debt. However, this Tribunal is not authorized to negotiate, extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with Counsel for the Secretary or the Director of HUD’s Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Should Petitioner’s financial concerns persist, he may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter on August 28, 2023 to the U.S. Department of the Treasury for administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in an amount equal to 15% of Petitioner’s monthly disposable income.

SO ORDERED.


Vanessa L. Hall
Administrative 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.*).