

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

In the Matter of:

**Naeisha Jackson**

Petitioner

23-VH-0170-AG-099

721019904

October 30, 2024

**DECISION AND ORDER**

On September 8, 2023, Naeisha Jackson (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “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.

**JURISDICTION**

The administrative judges of this Court 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 September 14, 2023, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On November 14, 2023, the Secretary filed her *Statement* along with documentation in support of her position. On December 12, 2023, Petitioner filed her *Statement* in support of her claim. 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.

The Secretary contends in her *Statement* that Naeisha Jackson (“Petitioner”) executed and delivered to the Secretary a Subordinate Note (the “Note”) dated September 20, 2014, in the principal amount of \$53,967.60. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA-insured mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary.

By the terms of the Note, ¶ 4(A), the amount to be repaid thereunder becomes due and payable “[o]n September 1, 2044 or, if earlier, when the first of the following events occurs: (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; or (ii) the maturity date of the primary note has been accelerated; or (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 his or her principal residence.”

On or about January 24, 2022, the Petitioner’s primary mortgage was paid in full and the FHA mortgage insurance was terminated, an event that caused the Note to become due. Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding, dated June 5, 2023 (“Notice”), was mailed to Petitioner’s last-known address. In accordance with the Notice and 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement agreeable to HUD, which could have avoided issuance of a wage garnishment order to Petitioner’s employer. Petitioner has not entered into any such agreement. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$53,967.60 as the unpaid principal balance as of September 7, 2023;
- b. \$359.68 as the unpaid interest on the principal balance at 1.0% per annum through September 7, 2023;
- c. \$2,189.03 as the unpaid penalties and administrative costs through September 7, 2023; and;
- d. interest on said principal balance from September 8, 2023, at 1.0% per annum until paid.

A Wage Garnishment Order was issued to Petitioner’s employer on July 6, 2023, and to date, Petitioner’s wages have been garnished three times, each in the amount of \$580.42. The first two garnishment payments have been received by HUD and are reflected in the amount of Petitioner’s debt claimed by HUD herein. The most recent garnishment payment dated September 5, 2023 has not yet been transferred to HUD by the U.S. Department of Treasury. Petitioner provided HUD with a copy of her recent bi-weekly pay statements.

Based upon that information, the Secretary proposes a wage garnishment repayment schedule in the amount of \$554.89 per pay period and requests a finding that the Petitioner’s debt is past due and legally enforceable; authorization of the proposed repayment schedule; and that stay

of referral of this matter to the Department of the Treasury for collection by Administrative Wage Garnishment be vacated.

### DISCUSSION

Petitioner claims that the subject debt is no longer owed because of a loan modification she previously executed before closing. She assumed, at the time of closing, that the title company would pay in full the subject debt as satisfaction. Petitioner finally claims that the proposed garnishment amount would create a financial hardship for her. She is willing to negotiate a lower monthly payment, if possible. As support for her financial hardship claim, Petitioner presented copies of her Consumer Financial Statement, 1040 tax records, and rental agreement.

According to Petitioner, the subject debt “has been put upon me as a result of a modification that was taken on my previous home, at address, 1111 South Long Avenue, Hillside, NJ 07205, while it was in my possession, prior to selling it in 2022.” Petitioner misunderstood this to mean that the subject debt was only in existence because of a loan modification and that payoff of the same thereafter would be “covered when the modification was granted.” The uncontroverted evidence presented by the Secretary demonstrates that Petitioner executed the Note with the intent that, upon default, Petitioner would be responsible for payment of said debt. Because the Secretary’s right to collect the debt is governed by the terms of the Note, Petitioner’s obligation for the subject debt remains intact because the Note remains intact. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). While the primary mortgage was paid in full at the time of closing, the subject debt remains outstanding.

To prove that the subject debt does not exist, Petitioner must offer evidence that proves either a written release from HUD to Petitioner or some valuable consideration accepted by HUD from Petitioner. See Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Neither has occurred in this case so the record of evidence remains insufficient. This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or is unenforceable.” See Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, the Court finds Petitioner’s claim fails for lack of proof.

Next, Petitioner contends that the title company should have paid the subject debt at closing. She states, “[w]hen I reached out to the attorney I utilized for closing, the attorney told me to take the matter up with the title company, and the title company was not willing to admit fault, though clearly the lien was missed by both the title company and the attorney (the experts) in the closing.” Case law precedent has long established that “[a] third party's error or negligence does not relieve Petitioner of liability for the debt... Petitioner's obligation to pay the debt derives from the terms of the Note." Stephond West, HUDOA No. 17-AM-0026-AG-006 (March 14, 2018) (citing Bryan McClees, HUDOA No. 17-AM-0037-AO-010 (February 14, 2018); see also Anna Bolton, HUDOA No. 23-VH-0146-AG-077 (September 13, 2024) (Petitioner is primarily responsible for payment of the subject debt regardless of the actions or inactions of the primary mortgage lender).

In this case, Petitioner relied on her assumption that the title company had paid in full the subject debt, and as a result, Petitioner once again thought she no longer owed the debt. This error

in judgement proved to be detrimental to the Petitioner because ultimately the onus falls on her to ensure that the subject debt is fully paid. See John Tipton, HUDOA No. 23-VH-0153-AO-083, September 12, 2024 (held that 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). So, Petitioner is responsible for paying the debt so claimed because the error was hers and not that of a third party.

Finally, Petitioner claims that the proposed wage garnishment amount would create a financial hardship for her. More specifically, Petitioner states that “the amount that is currently being taken from my check is causing financial hardship for me and I am requesting consideration, for a lower payment and/or more time to satisfy this payment.” After reviewing the record, Petitioner’s net income, less the deductions and expenses noted in her Consumer Financial Statement, left her with a positive balance at the end of the month that could reasonably cover not only the proposed monthly wage garnishment, but also any additional costs she might incur per month. Without additional evidence to further substantiate the expenses listed in her Financial Statement, this Tribunal is unable to assess the credibility of Petitioner’s financial hardship claim.

Even though Petitioner is requesting a lower monthly payment to satisfy the debt owed, this Tribunal is not authorized to negotiate, extend, recommend, or accept any repayment plan 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, she may also request a review of her financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

### **ORDER**

Based on the foregoing, Petitioner shall pay the subject debt as claimed by the Secretary.

The Order imposing the stay of referral of this matter on September 14, 2023 to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**. It is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment of \$554.89 per pay period or an amount equal to 15% of Petitioner’s disposable income.

SO ORDERED.  
  
Vanessa L. Hall  
Administrative 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.*).