

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

In the Matter of:

**Marie Dixon,**

Petitioner

23-VH-0189-AG-112

721020451

September 10, 2024

**DECISION AND ORDER**

This proceeding is before the Tribunal upon a *Request for Hearing (Hearing Request)* filed on September 21, 2023, by Marie Dixon (“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 September 21, 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 17, 2023, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of her position. In response to the *Sec’y. Stat.*, Petitioner filed a written *Statement* along with documentary evidence in support of her position on March 4, 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.

In or about August 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 14, 2014, Petitioner executed a Promissory Note (the "Note") in the amount of \$24,342.09 in favor of the Secretary.

Section 4(A) of the Note listed specific events that would make the debt become due and payable, one of which was that the Borrower has paid in full all amounts due under the primary note and related mortgage. According to the Secretary, on or about February 22, 2022, the FHA insurance on the first mortgage was terminated as the lender indicated that the mortgage was paid in full.

As the Note indicated, 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 other such place as HUD may have designated in writing by notice to Petitioner. 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:

- (a) \$24,342.09 as the unpaid principal balance as of September 30, 2023;
- (b) \$141.96 as the unpaid interest on the principal balance at 1.0% per annum through September 30, 2023;
- (c) \$1,517.67 as the unpaid penalties and administrative costs on the balance through September 30, 2023; and
- (d) Interest on said principal balance from October 1, 2023, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated September 4, 2023, (the "Notice") was sent to Petitioner at 100 International Dr. #2305, Baltimore, MD 21202.

In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. The Notice sent to Petitioner by the Department of the Treasury satisfied this requirement. The Notice indicates, "If you pay your debt in full or enter into a repayment plan acceptable to Treasury before October 4, 2023, a Garnishment Order will not be issued to your employer." The Notice also indicates, "Call us at the toll-free telephone number below to discuss the terms of a payment agreement." According to the record, Petitioner did not enter into a written repayment agreement in response to the Notice.

The Secretary's proposed repayment schedule is \$722.00 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay. Based on the foregoing, the Secretary requests that the Tribunal finds Petitioner's debt past due and legally enforceable and the Secretary's proposed repayment schedule fair.

### DISCUSSION

Petitioner claims that she does not owe the subject debt because it was allegedly paid in full at settlement when her home was sold. More specifically, Petitioner claims in her *Statement*:

I sold/closed on this property on 2/17/22 and the outstanding mortgage balance was documented in the title companies [sic] documentation to show the outstanding balance of \$248,848,44. This amount was paid to satisfy the outstanding mortgage balance. This payoff payment was confirmed and validated by the title company and the mortgage lender (Lakeview Loan Servicing LLC). The FHA case number: 244-064-7863 was also documented on the Payoff Procedure Disclosure (attached). I sold/closed on this property and followed all of the steps outlined by my mortgage lender and title company to ensure all outstanding balances were included on the Alta Combined Settlement Statement and paid in full. These documentary evidences [sic] are in support of my position. I beg of the judge to dismiss this case.

As support, Petitioner offered into evidence copies of a payoff statement from the Lakeview Loan Servicing LLC, the primary lender, and of a Settlement Statement from the Alta Title Company, to prove that the subject debt no longer existed.

Upon review, this Tribunal has determined that Petitioner has failed to meet her burden of proof regarding the existence of the subject debt. While Petitioner relies solely on the premise that the title company or the primary lender should have paid the subject debt during settlement, her assumption is in error. Any action or inaction by the primary mortgage lender or the title company is irrelevant as it relates to Petitioner's responsibility for this debt. For Petitioner not to be held liable, she must produce either a release in writing directly from HUD in which HUD explicitly states that Petitioner is relieved from her 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.


While Petitioner objects to the existence of the subject debt, the onus falls on Petitioner, not on Lakeview Loan or Alta Coast Title Company, to pay the subject debt and produce evidence that the debt is fully satisfied. Without such evidence, Petitioner remains responsible for 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, the Tribunal must find that Petitioner remains obligated to pay the subject debt.

**ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter on September 21, 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.  
  
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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.*).