

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

In the Matter of:

Ursula Hygh,

Petitioner

19-VH-0185-AG-050

780790868

December 30, 2020

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed on August 14, 2019, by Petitioner Ursula Hygh (“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 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 August 19, 2019, this Court 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 10, 2019, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of his position. On February 26,

2020, Petitioner filed, in response to the *Secretary's Statement* and the Court's *Orders*, a written *Statement* alleging financial hardship. This case is now ripe for review.

FINDINGS OF FACT

This debt resulted from a defaulted loan which was insured against non-payment by the Secretary, from an overpayment by HUD, from delinquent rent payments due to HUD, or due to other reasons.

On or about May 12, 2010, Petitioner executed and delivered to Vanderbilt Mortgage and Finance, Inc., a Manufactured Home Retail Installment Contract and Disclosure ("Note") in the amount of \$33,980.00. The Note was insured against nonpayment default by the Secretary pursuant to Title I of the National Housing Act. *Sec'y. Stat.*, ¶2,3, Ex. 1, Note; Ex. 2, *Sautter Declaration*, ¶ 3.

Petitioner defaulted on the Note by failing to make payments as agreed. The Note was subsequently assigned to HUD under the regulations governing the Title I Insurance Program. *Sec'y. Stat.*, Ex. 1, ¶ 5; Ex. 2, *Sautter Declaration*, ¶ 3.

HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 5, Ex. 2, *Sautter Declaration*, ¶ 4.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$7,512.43 as the unpaid principal balance as of July 31, 2019;
- b. \$18.78 as the unpaid interest on the principal balance at 1 % per annum through July 31, 2019;
- c. \$660.24 as the unpaid penalties and administrative costs as of July 31, 2019;
and
- d. interest on said principal balance from August 1, 2019 at 1 % per annum until paid.

Sec'y. Stat. ¶ 6; *Sautter Decl.*, ¶ 4.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated July 18, 2019, was mailed to Petitioner's last known address. *Sec'y. Stat.*, ¶ 7; Ex. 2, *Sautter Declaration*, ¶ 5. 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. However, to date, Petitioner has not entered into any such agreement. *Sec'y. Stat.* ¶ 8; *Sautter Decl.*, ¶ 4.

Petitioner provided no requisite financial documentation demonstrating that repayment of the debt owed to HUD would create hardship. HUD's attempts to obtain Petitioner's income information were unsuccessful. *Sec'y. Stat.* ¶ 8; *Sautter Decl.*, ¶ 4. Accordingly, the Secretary proposes a repayment schedule of \$227.54 per month, which will liquidate the debt in approximately

three years as recommended by the Federal Claims Collection Standards. Alternatively, should Petitioner's income information become available, the Secretary requests a repayment schedule in an amount equal to 15% of Petitioner's disposable income.

DISCUSSION

Petitioner does not dispute the existence or amount of the debt. Rather, Petitioner claims that the proposed garnishment amount would create a financial hardship. In order to prove financial hardship, Petitioner must submit evidence for the Court to review and assess the credibility of such claim. In Petitioner's *Statement*, she identified certain health challenges and financial burdens that impacted her ability to meet her financial obligations in the past. But Petitioner did not introduce into evidence supporting documentation that would more sufficiently prove limitations on her ability to pay the subject debt currently owed.

Pursuant to 31 C.F.R. § 285.11 (f)(8)(ii), Petitioner is required to show, by a preponderance of the evidence, that the proposed wage garnishment repayment schedule would create a financial hardship. In a case involving a claim of financial hardship, Petitioner "must 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 (March 27, 1985).

Herein, Petitioner submitted merely a list of her monthly financial obligations in her *Statement* but failed to submit copies of bills or statements in support of the amounts she alleged. This evidence, alone, was insufficient as proof of financial hardship and was not enough to persuade the Court that the proposed repayment would cause the same for Petitioner. Noting this lack of evidence in the record, the Court issued *Orders* to Petitioner on November 19, 2019, January 8, 2020, and July 27, 2020, that identified, with specificity, the documentary evidence needed by the Court to more sufficiently demonstrate her financial state. Petitioner was notified in those orders that "failure to comply would result in sanctions pursuant to 24 C.F.R. § 26.4(c), including judgment being entered *on behalf of the opposing party* or a decision based on the documents in the record of the proceeding." (Emphasis added). Although Petitioner filed a *Statement* in response to the last order issued, the evidence needed was once again not provided.

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 and or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). In the absence of documentary evidence that supports Petitioner's current income and alleged monthly expenses, the Court is unable to determine whether the Secretary's proposed wage garnishment repayment schedule would create a financial hardship for Petitioner. Thus, Petitioner's claim of financial hardship fails for lack of sufficient proof.


Without a record of evidence from Petitioner that either refutes or rebuts what the Secretary has presented, the Court finds that Petitioner remains contractually obligated to pay the subject debt so claimed by the Secretary.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment issued on August 19, 2019 is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount of \$227.54 per month or, should Petitioner's income information become available, the Secretary can alternatively request an amount equal to 15% of Petitioner's monthly disposable income.

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.