

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

In the Matter of:

Annette Robinson,

Petitioner

20-VH-0211-AG-125

721016477

November 18, 2021

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing (Hearing Request)* filed on June 30, 2020, by Petitioner Annette Robinson (“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 July 6, 2020, 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 November 25, 2020, the Secretary filed his *Statement (Sec’y. Stat.)* along with documentation in support of his position. In response to the *Secretary’s Statement*, Petitioner filed a written *Statement* along with documentary evidence in support of her claim of financial hardship on December 11, 2020. 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.

Annette C. Robinson (“Petitioner”) executed and delivered to the Secretary a *Subordinate Note* (the “Note”), dated March 17, 2016, in the principal amount of \$24,527.61. *Sec’y. Stat.* ¶ 2, Ex. 1, Note. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA-insured primary mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec’y. Stat.* ¶ 3, Ex. 2, *Declaration of Gary Sautter*¹ (“*Sautter Decl.*”) ¶ 4.

By terms of the Subordinate Note, the amount to be repaid thereunder becomes due and payable “[o]n April 1, 2046 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 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 principle residence.” *Sec’y. Stat.* ¶ 4, Ex. 1, Note, ¶ 4(A).

On or about September 27, 2019, 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. *Sec’y. Stat.* ¶ 5, Ex. 1, Note, ¶ 4; Ex. 2, *Sautter Decl.* ¶ 4. Accordingly, HUD has attempted to collect the amounts due under the Note, but Petitioner remains indebted to HUD. *Sec’y. Stat.* ¶ 5, Ex. 2, *Sautter Decl.* ¶¶ 5-6. A Notice of Intent to Initiate Administrative Wage Garnishment Proceeding, dated June 4, 2020, was mailed to Petitioner’s last-known address. *Sec’y. Stat.* ¶ 6, Ex. 2, *Sautter Decl.* ¶ 6.

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, which could have avoided issuance of a wage garnishment order to Petitioner’s employer. However, to date, Petitioner has not entered into any such agreement. *Sec’y. Stat.* ¶ 7, Ex. 2, *Sautter Decl.* ¶ 7.

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

- a. \$24,527.61 as the unpaid principal balance as of October 31, 2020;
- b. \$408.90 as the unpaid interest on the principal balance at 2.0% per annum through October 31, 2020;
- c. \$1,533.75 as the unpaid penalties and administrative costs as of October 31, 2020; and
- d. interest on said principal balance from November 1, 2020, at 2.0% per annum until paid.

Sec’y. Stat. ¶ 8, Ex. 2, *Sautter Decl.* ¶ 5.

¹ Gary Sautter is Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center.

HUD proposes a wage garnishment repayment schedule of \$735.29 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Standards. Alternatively, HUD proposes repayment 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. Petitioner states that the proposed wage garnishment amount exceeds her limited income. In what the Court deems as a counteroffer, Petitioner is willing to offer a set monthly amount of \$125.00 per month to pay in full the subject debt, an amount Petitioner claims is within her budget. As support, Petitioner submitted a copy of a completed *Debt Resolution Program Financial Statement* and copies of her earnings statements from November 2020 and December 2020. *Petitioner's Documentary Evidence (Pet's Docs)*.

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 only submitted a copy of a completed *Debt Resolution Program Financial Statement* in which she listed her expenses, but the *Financial Statement* was submitted without any proofs of payment that supported the monthly expenses or responsibilities identified. This *Financial Statement*, alone, does not provide enough evidence for the Court to assess Petitioner's claim of financial hardship. The Court twice issued *Orders* to Petitioner, on July 6, 2020 and September 23, 2020, identifying, with specificity, additional documentary evidence Petitioner needed to file to demonstrate her financial state more sufficiently. Petitioner was notified in both 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." In this case Petitioner failed to comply with the *Orders* by not providing the additional documentation needed by the Court.

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 evidence that reflects not only Petitioner's income but also Petitioner's monthly expenses and responsibilities, the Court is unable to determine the credibility of Petitioner's hardship claim. Therefore, the Court finds Petitioner's claim fails for lack of proof and, as a result, Petitioner remains contractually obligated to pay the subject debt.


As a final point, Petitioner submitted an offer of repayment for \$125.00 per month to be considered by the Court for settlement of the subject debt. While Petitioner may wish to negotiate

repayment terms with the Department, this Court is not authorized to 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 with the Director of HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner 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, the Order imposing the stay of referral on July 6, 2020 of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment of \$735.29 per month, or 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.