

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

In the Matter of:

DANA BYNUM,

Petitioner.

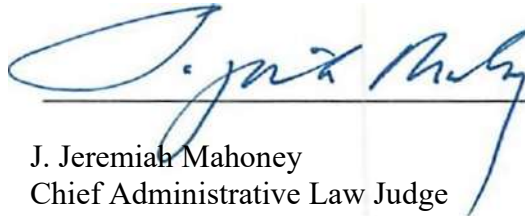
22-AM-0061-AG-044
(Claim No. 721016851)

November 21, 2023

NOTICE OF TRANSFER

Due to the retirement of Administrative Judge H. Alexander Manuel, the above-captioned matter is reassigned to Administrative Law Judge Alexander Fernández-Pons for adjudication in accord with applicable statutes and regulations.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

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DECISION AND ORDER

On December 17, 2021, Dana Bynum (“Petitioner”) filed a *Request for Hearing* (“Request”) concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the 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.

The Secretary of HUD has designated the judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

FINDINGS OF FACT

On or about May 11, 2007, Petitioner took out an FHA-insured mortgage on her primary property (“Primary Note”). On March 7, 2014, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$10,505.95. The funds secured by the Subordinate Note were paid by the Secretary to the lender to bring Petitioner’s payments associated with the Primary Note current to prevent foreclosure. In 2015, Petitioner filed for bankruptcy, which resulted in a dismissal.

The terms of the Subordinate Note included Petitioner’s promise to pay which was secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on the Subordinate Note. Additionally, the Subordinate Note requires payment (see “Manner of Payment”) on or before July 1, 2042, or when the first of the following events occur:

- i. borrower has paid in full all amounts due under the Primary Note and related mortgage, deed of trust, or similar security instruments insured by the Secretary;
- ii. the maturity date of the Primary Note has been accelerated;

- 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 her primary residence.

On October 16, 2019, Petitioner refinanced her Primary Note. Accordingly, the FHA mortgage insurance was terminated on the associated mortgage because the Primary Note was paid in full. However, Petitioner did not repay the Secondary Note as required. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$10,505.95 as the unpaid principal balance as of January 31, 2022;
- ii. \$420.24 as the unpaid interest on the principal balance at 2% per annum through January 31, 2022;
- iii. \$1,546.26 as the unpaid penalties and administrative costs as of January 31, 2022; and
- iv. interest on said principal balance from February 1, 2022, at 2% per annum until paid.

A “*Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings*” (“Notice”) dated October 26, 2021, was sent to Petitioner at her last known address. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Petitioner has not entered into a written repayment agreement.

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. See 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. See 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioner’s indebtedness, the Secretary has filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable* (“Secretary’s Statement”) together with a copy of the Note and the Declaration of Brian Dillon. Petitioner does not deny she undertook the debt. Rather, she states she was under the impression that all of her debts were cleared after she filed for bankruptcy and that the present debt, if not cleared at that time, was paid off when she refinanced her mortgage.

The express language of the Subordinate Note, signed and agreed to by Petitioner, states under borrower’s “Promise to Pay,” that, “In return for a loan received from Lender, Borrower promises to pay the principal sum of ten thousand five hundred and 95/100ths (U.S. \$10,505.95), to the order of the Lender” (emphasis removed). The Subordinate Note also expressly directs Petitioner to make payment to the Office of Housing FHA-Comptroller in Washington, D.C. Put simply, Petitioner remains responsible for the debt because the debt was not absolved, paid off, or released as a result of Petitioner’s bankruptcy proceeding or upon her refinance. Further, the debt could not have been absolved, paid off, or released at either of those times because the

Secretary, to whom the debt is owed, was not a party in either matter. In the absence of a release from HUD discharging Petitioner from her obligation to repay the debt, she remains indebted to the Secretary in the amounts set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at 3 (December 8, 2008) (“for Petitioner not to be held liable for the debt, there must either be a release in writing from the lender ... or valuable consideration accepted by the lender from Petitioner”) (citations omitted). Thus, the debt is legally enforceable and past due.

Having found Petitioner liable for the debt in the amounts claimed by the Secretary, this Court now reviews the Secretary’s proposed wage garnishment repayment schedule.¹ The Secretary may not garnish more than 15% of Petitioner’s disposable income. See 31 C.F.R. § 285.11(i)(2). Based on Petitioner’s pay statements and a Consumer Debtor Financial Statement Petitioner signed and submitted under penalty of perjury, the Secretary contends that a repayment schedule of \$157.25 biweekly (10% of Petitioner’s disposable income) will not cause Petitioner financial hardship.

To show 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 (Mar. 27, 1985). On her Financial Statement, Petitioner, lists her 18 year old son as a dependent.² She also lists the following monthly expenses: \$585 (car payment), \$500 (food, household items), \$400 (insurance), \$200 (gasoline, auto repairs), \$200 (television, Internet), \$200 (clothing), \$190 (out-of-pocket medical expenses), \$160 (lawn service), \$150 (electricity), \$137.50 (cellular service), \$125 (trash, water), \$100 (IRS debt), and \$35 (natural gas).³ In addition, Petitioner includes a copy of her annual property tax assessment in the amount of \$4,697.91. With the exception of that assessment, Petitioner provides no evidence to support her claimed monthly expenses. Thus, expenses that are nonessential, such as those for her IRS debt, television, Internet, lawn service, and clothing are discounted. See Lisa Mims, HUDOHA 14-AM-0027-AG-012 at 5 (July 16, 2014). However, credit may be given for certain essential subsistence expenses, despite insufficient documentation when the financial information is found to be generally credible. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012). Accordingly, Petitioner’s expenses for food, car, insurance, gas and car repairs, electricity, cellular service, and trash and water are found to be essential and credible. In addition, while Petitioner’s claim of \$200 per month for clothing is excessive, \$100 per month is found to be essential and credible.

A review of Petitioner’s essential monthly expenses reveals that the Secretary’s proposed garnishment repayment schedule will not cause Petitioner financial hardship. Specifically, deducting Petitioner’s essential monthly expenses (totaling \$2486) plus the proposed 10%

¹ Although email conversations between Petitioner and HUD’s Debt Servicing Representative reveal Petitioner’s concern about her ability to repay the debt, Petitioner does not claim financial hardship in her Request. Therefore, this Court’s review focuses on the repayment schedule proposed by the Secretary.

² In her email conversations with HUD’s Debt Servicing Representative, Petitioner states she is a single mother with two children. However, her statement is not given weight because she provides no proof of the same and only lists her son on her Financial Statement, which, as discussed, was signed under penalty of perjury.

³ Petitioner lists monthly expenses related to her son’s college tuition and living expenses (\$700) and phone service (\$137.50). These expenses are discounted as there is no evidence that her son is Petitioner’s dependent.

garnishment from her monthly disposable pay (\$3,407) leaves Petitioner with approximately \$580 per month. Accordingly, the Secretary may garnish Petitioner’s disposable pay as proposed.

Should Petitioner 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.⁴ Petitioner is entitled to seek reassessment the repayment schedule in the future in the event that he experiences materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).

ORDER

For the reasons set forth above, the Court finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is:

ORDERED that the Secretary is authorized to seek administrative wage garnishment in the amount of 10% of Petitioner’s disposable income per month, or such other amount as determined by the Secretary, not to exceed 10% of Petitioner’s disposable income per month. It is

FURTHER ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

SO ORDERED,

**ALEXANDER
FERNANDEZ-
PONS**

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government
OU = Department of Housing and Urban
Development, Office of the Secretary
Date: 2023.11.21 11:12:37 -05'00'

Alexander Fernández-Pons
Administrative Law 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.).

⁴ The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached at 1-888-826-3127.