

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

In the Matter of:

**Michelle Morin,**

Petitioner.

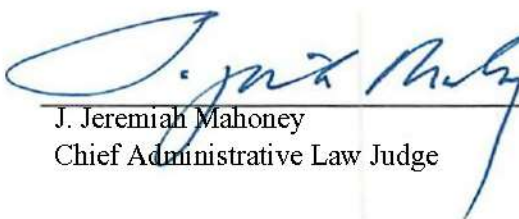
22-AM-0120-AG-084  
(Claim No. 721018207)

July 16, 2024

**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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22-AM-0120-AG-084  
(Claim No. 721018207)

July 16, 2024

**DECISION AND ORDER**

On February 8, 2022, Michelle Morin (“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**

Petitioner procured a HUD-insured mortgage on her primary property (“Primary Note”). In October 2013, the Primary Note on Petitioner’s home was in default. To prevent foreclosure, HUD advanced funds to Petitioner’s lender to bring the primary note current. In exchange for foreclosure relief, on October 19, 2013, Petitioner executed a Partial Claim Promissory Note (“Subordinate Note”) to HUD in the amount of \$33,576.77.

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 on or before October 1, 2043, 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 instrument 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 December 23, 2013, the Subordinate Mortgage securing Petitioner's promise to pay the Subordinate Note was recorded in the Town of South Windsor's records at Book 2386, Page 331. Then, on May 8, 2014, a second Subordinate Mortgage also attempting to secure Petitioner's promise to pay the Subordinate Note was erroneously recorded in the Town of South Windsor's records at Book 2404, Page 301. To rectify that error, on March 22, 2019, a Release of Mortgage was recorded in the Town of South Windsor's records at Book 2696, Page 0064. The Release of Mortgage specifically noted that it only related to the second Subordinate Mortgage, which was recorded in error and was not meant to release any other pre-existing HUD Partial Claim on title or record.

On or about August 28, 2020, HUD received notice that the Primary Note was paid in full, which made the Subordinate Note immediately due to HUD. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$33,576.77 as the unpaid principal balance;
- (b) \$195.79 as the unpaid interest on the principal balance at 1.0% per annum;
- (c) \$2,073.60 as the unpaid penalties and administrative costs; and
- (d) interest on said principal balance from March 1, 2022, at 1.0% per annum until paid.

A "Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated January 5, 2022, 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 undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of 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 Subordinate Note signed by Petitioner and the sworn Declaration of Brian Dillon, who attests to Petitioner's debt. Accordingly, the Tribunal finds that the Secretary has met her initial burden of proof.

Petitioner initially claims that she does not owe the debt because the loan was released when she sold her home. The express language of the Subordinate Note, signed and agreed to by Petitioner, states that, “In return for a loan received from Lender, Borrower promises to pay the principal sum of thirty-three thousand five hundred seventy-six dollars and 77 cents (U.S. \$33,576.77), to the order of the Lender” (emphasis removed). Petitioner provides a copy of a Release of Mortgage, dated February 7, 2019. However, this Release of Mortgage only releases the duplicate HUD Subordinate Mortgage. The original HUD Subordinate Mortgage remains active against Petitioner’s property. Petitioner has provided no evidence that HUD has been repaid in full, or that Petitioner was otherwise legally released by HUD from her obligation to repay the debt. Thus, the debt is legally enforceable and past due. See *In re Juanita Mason*, HUDOA No. 08-H-NY-AWG70, at 3 (December 8, 2008) (“for Petitioner to not 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).

Having found Petitioner liable for the debt in the amount of \$33,576.77, this Tribunal now reviews the Secretary’s proposed wage garnishment repayment schedule. In subsequent communication, Petitioner concedes to the debt owed, and argues that the Secretary’s proposed garnishment amount would create a financial hardship. Pursuant to 31 C.F.R. § 285.11(i)(2)(A), the Secretary is authorized to collect up to 15% of Petitioner’s disposable pay. A showing of financial hardship requires Petitioner to, “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).

In support of her claim, Petitioner submits a letter dated July 11, 2023, which lists her monthly expenses. Petitioner claims the following monthly household expenses: \$2,300 (mortgage), \$350 (electricity), \$100 (gas), \$800 (grocery), \$400 (extracurricular activities for children), \$100 (gas for car), and \$300 (credit card payment). However, Petitioner provides no proof of these household expenses.

As for Petitioner’s biweekly disposable income, Petitioner provides a copy of her biweekly pay statement from the State of Connecticut for the pay period ending on June 29, 2023. The pay statement reflects a gross pay of \$3,992.84, less allowable deductions for Federal Income Tax, Medicare, Social Security, and State Income Tax, leaving Petitioner with a biweekly disposable pay of \$3,164.53 or monthly disposable pay of \$6,329.06.

A letter listing Petitioner’s monthly expenses, standing alone, is insufficient to prove financial hardship. Without proof of payments or other additional evidence to further substantiate such claims, the letter lacks credibility. This Tribunal has long held that, “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is ... unenforceable.” *Michael Bridges*, HUDOA No. 21-VH-0092-AG-053 (October 28, 2022) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Thus, in the absence of additional evidence, the Tribunal must find that Petitioner’s claim of financial hardship fails for lack of sufficient proof.

Even if Petitioner submitted sufficient evidence to support her claimed monthly expenses, Petitioner's claim of financial hardship still fails. A review of Petitioner's essential monthly expenses and biweekly pay statement reveals that the Secretary's proposed garnishment repayment schedule will not cause Petitioner financial hardship. Petitioner's claimed monthly expenses total \$3,950.00.<sup>1</sup> Therefore, Petitioner's monthly disposable income of \$6,329.06, less her essential monthly expenses of \$3,950.00, leaves Petitioner with a remaining balance of \$2,379.06. The Secretary's proposed garnishment of 15% of Petitioner's disposable income, or roughly \$949.36 per month, would leave Petitioner with \$1,429.70 per month to cover additional essential household expenses that were not identified or that will be unforeseen. Accordingly, the Secretary may garnish 15% of Petitioner's disposable pay.

Should Petitioner wish to negotiate repayment terms with the Department, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.<sup>2</sup> Petitioner is entitled to seek reassessment the repayment schedule in the future in the event that she experiences materially changed financial circumstances. See 31 C.F.R. § 285.11(k).

### ORDER

For the reasons set forth above, the Tribunal 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 15% of Petitioner's disposable income per month, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month. It is

**FURTHER ORDERED** that the Order imposing the *Stay of Referral* on 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: 2024.07.16 14:23:32 -04'00'

Alexander Fernández-Pons  
Administrative Law Judge

<sup>1</sup> Petitioner did not proffer an explanation as to how extracurricular activities for her children are essential to the household and, therefore, such expenses were excluded from this total.

<sup>2</sup> The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting the HUD attorney assigned to this case.

**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.).