

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

In the Matter of:

**William Bogue,**

Petitioner

22-VH-0094-AG-067

721018056

December 21, 2023

**DECISION AND ORDER**

On January 18, 2022, William Bogue (“Petitioner”) filed a hearing request, along with limited documentary evidence, concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts allegedly owed to the United States government.

**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 pursuant to 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 January 28, 2022, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On March 25, 2022, the Secretary filed her *Statement* along with documentation in support of his position. Petitioner, on November 15, 2022, filed his *Statement* along with documentary evidence in support of his claim of financial hardship. 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 her *Statement* the Secretary maintains that William Bogue (“Petitioner”) obtained a HUD-insured mortgage loan to purchase the subject property. Following Petitioner’s default under the HUD-insured mortgage, HUD approved a partial claim and advanced funds to the lender in order bring her delinquent mortgage arrears current, thereby protecting her from foreclosure. In exchange for foreclosure relief, Petitioner executed a Subordinate Note on August 21, 2014, in the amount of \$81,247.32 in favor of the Secretary.

According to the Secretary, the Subordinate Note does not require periodic payments, but mandates the full repayment of the principal balance upon the earlier of: (1) October 1, 2044; (2) payment in full of the primary, HUD-insured note; (3) the acceleration of the primary, HUD-insured note; (4) the termination of HUD insurance; or (5) the property securing the note is no longer used as Petitioner’s primary residence. On or about July 24, 2020, Petitioner’s primary, HUD-insured mortgage was paid in full and payment to HUD became due pursuant to paragraphs 4(a)(i) and (iii) of the Subordinate Note. 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) \$ 80,467.32 as the unpaid principal balance as of January 31, 2022;
- (b) \$ 536.24 as the unpaid interest on the principal balance at 1.0% per annum through January 31, 2022;
- (c) \$ 4,216.38 in unpaid penalties and administrative costs on the balance through January 31, 2022.
- (d) interest on said principal balance from February 1, 2022 at 1.0% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment dated October 20, 2021 was sent to Petitioner. A Wage Garnishment Order was issued to Petitioner’s employer on November 23, 2021. Petitioner’s wages have been garnished three times for a total of \$1,294.81. The first two garnishments totaling \$884.03 are reflected in the current balance due, while the most recent garnishment dated January 20, 2022, in the amount of \$410.78 is not reflected as the Department of Treasury has not yet remitted the payment to HUD.

The Secretary determined that Petitioner’s biweekly gross salary is \$4,668.09. “Less allowable deductions of \$1,410.54, Petitioner’s biweekly net disposable pay equals \$3,257.55. Because Petitioner’s pay is subject to a child support garnishment in the amount of \$519, the Government may garnish 25% of Petitioner’s disposable income, which equates to \$814.38, less the child-support garnishment. 31 C.F.R. § 285.11(i)(3)(ii)(B).” Based on his financial statement, Petitioner receives an average of more than \$5,700 per month in additional income and, therefore, the Secretary does not believe that a biweekly garnishment in the amount of \$295.38 would cause financial hardship.

Based on the foregoing, the Secretary requests that the administrative wage garnishment be authorized at 15% of Petitioner's disposable pay which would result "in the amount of \$295.38 per biweekly pay period," essentially \$590.67 monthly.

### 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.

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).

According to 31 C.F.R. § 285.11(c), the proposed garnishment amount typically would be 15% of Petitioner's disposable income which is "that part of the debtor's compensation...from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld...[including] amounts for deductions such as social security taxes and withholding taxes..." In this case, Petitioner's payroll statement from his employer shows monthly gross earnings of \$9336.18 which averages \$4668.09 bi-weekly, before deductions. After allowable deductions for social security (FICA), federal taxes, state taxes, and other deductions permitted by law, Petitioner's total deductions equal \$1410.54 which reduces Petitioner's monthly disposable income to \$6514.70 (\$3257.55 biweekly).

Next Petitioner offers documentary evidence, along with proofs of payment, for the following essential monthly household expenses: mortgage, \$2280.62; plus tuition, child support garnishment, automobile loan, grocery expenses, life insurance, and utility bills that, together, total \$5358.42. Petitioner offers certain other monthly expenses for the Court's review that include hair salon visits, Netflix, and other miscellaneous costs that the Court deemed as non-essential and thus excluded. Based on the evidence presented, Petitioner's monthly household expenses total \$7639.04 before consideration of the proposed garnishment amount presented by the Secretary.

In this instance however, an exception under 31 C.F.R. § 285.11(i)(3)(ii)(B) applies that directly impacts the proposed garnishment amount determination. Petitioner has an existing bi-weekly child support garnishment in the amount of \$519.00 bi-weekly (\$1038.00 monthly). The Secretary acknowledges, and the Court agrees, that 31 C.F.R. § 285.11(i)(3)(ii)(B) applies here and provides that if there is a garnishment amount in place for family support, the garnishment amount determined in this case would be subject to the existing family support garnishment. This means that the garnishment rate of 25% of Petitioner's current monthly disposable income of \$6514.70 would be \$1628.67. So, the monthly child support garnishment of \$1038.00 would be subtracted first from \$1628.67 and the remaining balance of \$590.67 could potentially be considered for an additional garnishment amount. That balance is the combined total of the Secretary's bi-weekly proposed garnishment amount of \$295.33 under the Court's review.

If the Court authorizes the Secretary's proposal, Petitioner's monthly essential expenses would increase by \$590.67 from \$7639.04 to \$8227.00 and exceed even more Petitioner's monthly

disposable income of \$6514.70. Based on the Court's review, Petitioner would have a negative monthly balance of (-\$1715.01) every month that obviously would not cover expenses that Petitioner might incur after payment of monthly essentials. To assume otherwise is impractical. Based on the evidence presented, Petitioner has met his burden of proof in support of his claim of financial hardship.


31 C.F.R. § 285.11(k)(3) provides that this Court has the authority to order garnishment at a lesser rate based upon the record before it. While the Secretary has successfully established that the subject debt is legally enforceable against Petitioner in the amount so claimed, any additional income alleged by the Secretary has, according to the record, been applied by Petitioner to his increased monthly expenses. Therefore, the Court finds that a garnishment amount at any percentage of Petitioner's disposable income would, at this time, constitute a financial hardship.

### **ORDER**

Based on the foregoing, sufficient evidence has been presented to justify suspension of collection against Petitioner at this time.

The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative wage garnishment shall remain in place without prejudice to the Secretary's right to seek recovery of the subject debt by means of an administrative wage garnishment should, in the future, Petitioner's disposable income increase, or Petitioner's essential household expenses for necessities substantially be reduced. Therefore, based on the foregoing it is hereby

**ORDERED** that the Secretary shall not, at this time, seek further collection of this outstanding obligation by means of administrative wage garnishment due to Petitioner's current financial circumstances.

SO ORDERED.  
  
Vanessa L. Hall  
Administrative 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.*).