

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

In the Matter of:

JANNETTE M. BUSH,

Petitioner.


22-AM-0158-AG-106
(Claim No. 780777253)

August 30, 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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DECISION AND ORDER

On April 16, 2022, Jannette Bush (“Petitioner”) filed a *Hearing Request* (“*Request*”) seeking a hearing 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 the 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 July 31, 2003, Petitioner executed a promissory note (“Note”) in the amount of \$24,025 with Admirals Bank (formerly known as Domestic Bank) to finance an addition to her home. The Note was insured by the Secretary under Title 1 of the National Housing Act. The terms of the Note, signed by Petitioner, included her promise to pay the full amount owed plus interest through monthly payments by August 5, 2023. On December 30, 2003, Petitioner signed HUD form 56002, “Completion Certificate for Property Improvements” certifying satisfactory completion of the addition.

On July 30, 2015, the Note was assigned to HUD, pursuant to the regulations governing the Title I insurance program, after Petitioner defaulted. HUD now contends Petitioner is indebted to the Secretary for the following amounts:

- i. \$16,019.00 as the unpaid principal balance as of April 30, 2022;
- ii. \$2,065.88 as the unpaid interest on the principal balance at 4.0% per annum through April 30, 2022;
- iii. \$8352.68 as the unpaid penalties and administrative costs as of April 30, 2022; and

iv. interest on said principal balance from May 1, 2022, at 1.0% per annum until paid.¹

A “Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings” (“Notice”) dated April 7, 2022, sent by the U.S. Department of Treasury on behalf of HUD was received by Petitioner. 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.

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).

As evidence of Petitioner’s indebtedness, the Secretary has filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable*. Attached as exhibits thereto are a copy of the Note and the Declaration of Brian Dillon, Director of the Asset Recovery Division in HUD’s Financial Operations Center, attesting to Petitioner’s debt. In addition, the express language of the Note, signed and agreed to by Petitioner, states under “Borrower’s Promise to Pay,” that “[i]n return for a loan that I have received, I promise U.S. \$24,025.00 . . . plus interest, to the order of the Lender.”

Petitioner acknowledges the existence of the debt, but contends she is the victim of predatory lending. However, she does not provide evidence of her claim, and this Tribunal has consistently rejected unsupported assertions. See In re Joan Hattan, HUDOA No. 11-M-NY-LL23 (June 29, 2011) at 3 citing Bonnie Walker, HUDBCA No. 95-GNY-7300 (July 3, 1996). Consequently, Petitioner’s allegation fails for lack of proof.²

Further, there is no evidence Petitioner has paid the amount owed to HUD or that HUD released her from her obligation to do so. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at p. 3 (December 8, 2008) (“[F]or 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). Accordingly, the evidence submitted by HUD under oath establishes the existence and amount of the debt and that it is owed by Petitioner.

Having established the debt, the Secretary seeks to garnish \$308.83 of Petitioner’s disposable pay monthly. Petitioner claims the proposed garnishment will cause her financial hardship. In order for Petitioner to show financial hardship she “must submit ‘particularized evidence,’ including proofs of payment, showing that [she] will be unable to pay essential

¹ If found liable for the debt, Petitioner may also be responsible for U.S. Department of Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6). Such fees may constitute 30% of the amount Petitioner allegedly owes HUD.

² Any cause of action Petitioner believes she may have against a third party must be pursued in another forum. The Tribunal makes no ruling on any such issue and lacks jurisdiction to do so.

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 provides an itemized list of monthly expenses and documentation for electricity (\$229.30), heat (\$122.63), property taxes (\$356.95), utilities (\$266.58), home insurance (\$142.42), and auto insurance (\$357.07).³ Other itemized but undocumented expenses are deemed essential, including groceries (\$200), auto payment (\$450), gas (\$1080), tolls (\$38), and phone (\$130). See Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012) (finding that credit may be given for certain essential household expenses, despite insufficient documentation when the financial information is found to be generally credible).⁴ However, the estimate for gas is excessive. It approximates driving over 1,300 miles per week. Thus, the Tribunal reduces that cost to \$540 monthly and finds the aforementioned expenses credible.

Based on the evidence provided, Petitioner’s monthly disposable pay is \$3,717 and her expenses amount are \$3,078.⁵ HUD proposes a monthly garnishment of \$308.83. As Petitioner retains \$330.75 after garnishment, the Tribunal finds that HUD’s proposed schedule causes her no financial hardship. Accordingly, the Secretary may garnish the lesser of \$308.83 per month or 15% of Petitioner’s disposable pay. Should Petitioner wish to negotiate repayment terms with HUD, the Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.⁶ Petitioner may seek reconsideration if she experiences a material change in her circumstances. See 31 C.F.R. § 285.11(k)(1).

ORDER

For the reasons set forth above, the Tribunal finds the subject debt 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 monthly amount of \$308.83 of Petitioner’s disposable pay or 15% of Petitioner’s disposable pay, which ever is less, or such other amount as determined by the Secretary, not to exceed either of the aforementioned amounts. It is

³ Some of the bills Petitioner submitted appear to be annual or semi-annual. When the billing period was unclear, assumptions were made based on the available information.


⁴ Certain expenses for which Petitioner provided documentation are not considered, including an \$1,800 student loan, \$8,900.11 in back taxes, and several credit card and medical bills. It is unclear whether payments are currently required (i.e., Petitioner states the student loan is in deferment and she is in discussions with the IRS) or if the credit card and medical debts are recurring. Petitioner also lists monthly legal expenses of \$1,250 to help a relative leave foster care. These expenses are also not considered, as no invoices or receipts are provided.

⁵ Petitioner, who is employed by a school district, does not state whether her salary is for 10 or 12 months. Thus, the Tribunal considers her compensation in a most favorable light by assuming it is for 10 months.

⁶ 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.

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: 2024.08.30 11:11:50 -04'00'

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.).