

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No. 10-0100
)	
Jose Montes,)	
)	
Petitioner)	Decision and Order

Pursuant to a Hearing Notice, I held a hearing in this proceeding by telephone, on April 15, 2010, at 10:00 A.M. Eastern Time. Petitioner, Jose Montes, and Respondent's representatives, Gene Elkin and Mary E. Kimball, participated and were sworn. Ms. Kimball introduced, identified and authenticated records regularly maintained by USDA, Rural Development that were received as Exhibits RX-1 through RX-6. Petitioner did not produce or introduce any documents for receipt as evidence. At issue is the nonpayment of a debt owed to USDA, Rural Development on a home mortgage loan on property that Mr. Montes had owned.

The evidence received shows that subsequent to his divorce from his former wife, the property was sold in a short sale that, after payment of the remaining principal, interest and various expenses, left Mr. Montes still owing a debt to USDA, Rural Development. Mr. Montes has moved to Puerto Rico where he is employed by the Department of Veteran Affairs at a salary which, after deducting necessary living expenses, would result in undue financial hardship if more than \$75.00 per month is garnished from his salary.

Findings

The testimony and exhibits received in evidence proved that:

1. On December 23, 1994, petitioner signed an assumption agreement with USDA Farmers Home Administration (now USDA, Rural Development) for the purchase of a home at 39 Belleview Avenue, Erial, New Jersey 08081.(RX-1).
2. The mortgage loan was not paid and the property was sold in a short sale, on October 31, 2003, for \$79,710.86. At that time, the amount due to USDA, Rural Development was \$92,527.72. After the funds from the short sale were applied, the amount of the debt still owed was \$12,816.86. After the sale, additional fees of \$786.24 were billed to the account. USDA, Rural Development has received two U.S. Treasury Department offset payments that total \$710.49. The balance owed to USDA, Rural Development is \$12,875.61. (RX-5). An additional \$3,605.17 may be owed to Treasury for potential collection fees. (RX-6).
3. Mr. Montes lives with his girl friend and she pays some of their expenses. Mr. Montes is currently employed as a WG 9 carpenter by the United States Department of Veteran Affairs at an hourly wage of [REDACTED] that is paid bi-weekly at about [REDACTED]. He and his girl friend split the monthly rent of \$500.00 and when his share of the expenses for food, gas for his car, and other necessities are deducted from his income, he has a maximum of \$ [REDACTED] available for garnishment from his monthly, disposable income.

Conclusions

1. USDA, Rural Development has proven that Jose Montes is indebted to USDA, Rural Development in the amount of \$12,875.61 plus potential fees of \$3,605.17 owed to Treasury.
2. Based upon the Petitioner's current income and necessary living expenses, administrative wage garnishment of Petitioner's wages shall be at the rate of \$75.00 per month. A higher amount of monthly garnishment would cause him undue financial hardship.

Order

For the foregoing reasons, administrative wage garnishment of the wages of the Petitioner, Jose Monte may be made provided the sum garnished each month does not exceed \$75.00.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

Dated: _____

Victor W. Palmer
Administrative Law Judge