

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

AWG Docket No. 10-0136

In re: BETTY M. PIFER,

Petitioner

**DECISION AND ORDER**

This matter is before the Administrative Law Judge upon the request of Betty M. Pifer for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On March 11, 2010, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved and to direct the exchange of information and documentation concerning the existence of the debt.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on March 24, 2010. On April 7, 2010, Robert M. Hanak, Esquire, Hanak, Guido and Taladay of DuBois, Pennsylvania entered his appearance and faxed the Petitioner's Narrative. Hard copies followed which were filed on April 12 and 13, 2010.

In the materials filed by the Petitioner, Ms. Pifer acknowledged signing the note and mortgage which gave rise to the obligation being sought to be collected and her default on the loan, but reiterated her position set forth in multiple exhibits that USDA

had been non-responsive to her efforts to avoid foreclosure, that she had been advised by Gary Reed, a USDA employee that if she could sell the house that USDA would accept current fair market value in satisfaction of the outstanding mortgage,<sup>1</sup> that she had attempted to negotiate a sale of the property through assumption of her mortgage without success and that others similarly situated had been treated more favorably than she was the case with her. The file is extensive and amply documents USDA's lack of responsiveness. In response to her testimony that she had completed numerous packets in an effort to come to some settlement, Rural Development responded that while she may have disclosed her financial condition, she had failed to make an offer so packets were repeatedly sent to her apparently without explanation of the need to submit an offer.

The Narrative filed by the Respondent reflects that foreclosure proceedings were brought by the lender against the Petitioner and the property was sold in a short sale with less being realized from the sale than the amount of the obligation owed. The total amount due prior to the sale was \$61,038.63. Sale proceeds amounted to \$40,000.00; however, after expenses of sale, USDA received only \$35,743.13, leaving a balance of \$21,981.73. On Account #5979449, USDA has since received payments totaling \$3,312.02 (after deduction of Treasury fees), and the remaining balance of \$1.75 was waived. On Account #5979452, USDA has received \$1,203.21 (after deduction of Treasury fees) leaving the current balance owed of \$20,778.52, exclusive of Treasury fees in the potential amount of \$5,817.99.

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<sup>1</sup> Property values had declined significantly; the Petitioner purchased the house by assuming an existing loan of \$40,848.91 and executing a new note for \$10,430.00; however, despite numerous improvements, by 1999, realtors looking at the house placed its value at between \$29,000 and \$39,000. PX-15, 35. USDA's letter of July 12, 2001 advising that although the short sale would be approved, any deficiency balance would require debt settlement was sent to the purchaser's attorney rather than to the Petitioner who testified that she believed that a sale for current fair market value would satisfy the outstanding balance and that she would not have made the sale had she been properly informed. PX-29.

The Petitioner also provided information concerning her current financial condition which reflects reflects a marginal existence, with minimal ability to pay normal recurring necessary expenses and no current ability to liquidate the debt sought to be collected.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

**Findings of Fact**

1. On September 7, 1993, the Petitioner assumed an existing USDA loan of \$40,848.91 and executed a new note to USDA for \$10,430.00 to purchase a residence at R.R. #1, Box 130, DuBois, Pennsylvania. RX-1,2.
2. The property was sold at a short sale on July 13, 2001 with proceeds realized from that sale in the amount of \$35,743.13, leaving a balance due of \$25,295.50. RX-4.
3. Treasury offsets totaling \$3,312.02 have been received on Account #5979449 and \$1,203.21 on Account #5979452. RX-3.
4. The remaining unpaid debt is in the amount of \$20,778.52, exclusive of potential Treasury fees. RX-4,5.
5. The Petitioner's financial condition reflects a marginal existence, with minimal ability to pay normal recurring necessary expenses and no current ability to liquidate the debt sought to be collected.

**Conclusions of Law**

1. Betty M. Pifer is indebted to USDA Rural Development in the amount of \$20,778.52 for the mortgage loan(s) extended to her.

2. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
3. Due to the Petitioner's financial hardship, the Respondent is **NOT** entitled to administratively garnish the wages of the Petitioner.

**Order**

For the foregoing reasons, the wages of the Betty M. Pifer **MAY NOT** be subjected to administrative wage garnishment.

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

Done at Washington, D.C.  
May 24, 2010

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**PETER M. DAVENPORT**  
Acting Chief Administrative Law Judge

Copies to: Robert M. Hanak, Esquire  
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