

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 10-0215
Carolyn R. Adams, f/k/a)	
Carolyn R. McDaniel)	
)	
Petitioner)	Decision and Order

1. The hearing was held by telephone on July 7 and 8, 2010. Carolyn R. Adams, formerly known as Carolyn R. McDaniel, the Petitioner (“Petitioner Adams”), participated (only on the second day), representing herself. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Mary E. Kimball and Gene Elkin. (Mr. Elkin participated only on the first day).

2. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
Bldg 105 E, FC-22, Post D-2
4300 Goodfellow Blvd
St Louis MO 63120-1703

mary.kimball@stl.usda.gov 314.457.5592 phone
314.457.4426 FAX

3. I encourage **Petitioner Adams and the collection agency** to **negotiate promptly** to determine by settlement the disposition of the debt. Petitioner Adams has proved that repayment of the debt would cause her financial hardship, based on her testimony and the exhibits she filed, which are hereby admitted into evidence. Petitioner Adams’ evidence shows that she is Head of Household with four dependents in addition to herself: two are her children, and two are her sister’s children. Petitioner Adams testified that she receives no child support and does not know even the whereabouts of any of the other people, including her sister, who are obligated to support the four dependents. Currently, Petitioner Adams has NO income, because her [REDACTED] annual salary working as a bus driver for

Richland County School District One is paid during the roughly 9-month school year and NOT during the nearly 3-month summer break. Petitioner Adams' last pay cycle ended June 4, 2010, and the next pay cycle will not begin until August 27, 2010. Petitioner Adams' reasonable living expenses for her family of five are greater than her income, even when she is being paid. She testified that this year she has been unable to get a summer job because of funding cuts.

4. Petitioner Adams testified that when the real estate securing her loan was sold nearly 11 years ago in September 1999, she was told that she would not be required to repay the balance of the loan; that everything was settled from the sale. Petitioner Adams testified that Mr. Risher, the USDA Rural Development supervisor/manager at the Orangeburg, South Carolina office at the time, assured her that her loan was satisfied by the sale of the real estate with no further repayment required.

5. There is no evidence in writing to show that the balance of Petitioner Adams' loan was "written off" or forgiven or reduced to zero as a result of the sale of the real estate. Petitioner Adams' loan amount was \$60,986.79 when the real estate was sold. *See* the USDA Rural Development exhibits filed by Ms. Kimball (which are hereby admitted into evidence) and Ms. Kimball's testimony. The real estate was sold for \$25,000.00, in a "short sale," in that the lien against the real estate was released so that the sale could occur, even though the sale proceeds were not adequate to extinguish the loan. *See* USDA Rural Development Exhibit RX-5, a letter dated November 23, 1999, which includes the opening sentence, "The remaining debt on your RHS (Rural Housing Service) account has been referred to the Internal Revenue Service (IRS) for collection."

6. Once the real estate sale proceeds (\$23,100.00) had been applied to the loan, plus the subsidy credit, etc., Petitioner Adams' loan balance was \$37,455.71.

7. Petitioner Adams' income tax refunds during 2003 and 2008 repaid \$8,428.81 of the loan, after fees were subtracted, resulting in a current balance of \$29,026.90, still due.

8. Petitioner Adams testified that her wages were garnished in January, February, and March 2010, totaling about \$749. Ms. Kimball confirmed that Petitioner Adams' loan has NOT yet been credited with payments from garnishments.

Summary of the Facts Presented

9. Petitioner Adams (Carolyn R. Adams, formerly known as Carolyn R. McDaniel), owes to USDA Rural Development a balance of **\$29,026.90** (as of July 8, 2010) in repayment of a loan made in the fall of 1986 ("the debt"). *See* USDA Rural Development Exhibits.

10. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects) on **\$29,026.90** would increase the current balance by \$8,127.53, to \$37,154.43. *See* USDA Rural Development Exhibits, esp. RX-4.

11. Petitioner Adams has NOT been involuntarily separated from employment. Her employment is seasonal, in that the school district does not utilize the services of its bus drivers during nearly three months each summer. Nevertheless, I would not find an exclusion from garnishment for Petitioner Adams based on either her nine-months-per-year work or her nine-months-per-year pay. *See* paragraph 3.

12. Any garnishment would result in **financial hardship** to Petitioner Adams and is NOT authorized. *See* paragraph 3.

13. Petitioner Adams is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Findings, Analysis and Conclusions

14. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Adams and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

15. Petitioner Adams owes the debt described in paragraphs 4 and 5.

16. Garnishment would result in **financial hardship** to Petitioner Adams, **and NO garnishment is authorized**. 31 C.F.R. § 285.11.

Order

17. Until the debt is repaid, Petitioner Adams shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in her mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

18. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment.

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

Done at Washington, D.C.
this 12th day of July 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776