

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0212

In re: FRED SIMMONS,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of the Petitioner, Fred Simmons, 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 April 26, 2010, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for telephonic hearing on July 29, 2010.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on June 10, 2010. The Petitioner has provided information concerning his financial condition and participated during the telephonic hearing, assisted by his counsel, John F. Shuler. During the hearing, the Petitioner testified that the information contained on the Consumer Debtor Financial Statement was true and correct and that he was drawing Social Security and Veteran's benefits and was no longer working.

On the basis of the record before me, nothing further having been received from the Petitioner, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On September 2, 1980, the Petitioner and Barbara Simmons, his wife, received a home mortgage loan in the amount of \$35,300.00 from the Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Orangeburg, South Carolina. RX-1.
2. The property was sold at a short sale on December 14, 1998 with proceeds realized from that sale in the amount of \$33,977.28, leaving a balance due of \$51,085.88. RX-3.
3. Treasury offsets totaling \$9,329.8, exclusive of Treasury fees, have been received. RX-3.
4. The remaining unpaid debt is in the amount of \$41,746.07, exclusive of potential Treasury fees. RX-3.
5. The Petitioner draws Social Security and Veteran's benefits and is not employed.

Conclusions of Law

1. Fred Simmons is indebted to USDA Rural Development in the amount of \$41,746.07, exclusive of potential Treasury fees for the mortgage loan extended to him.
2. As the Petitioner is not employed, administrative wage garnishment is not appropriate.
3. The Respondent is **NOT** entitled to administratively garnish the wages of the Petitioner.

4. The termination of administrative wage garnishment proceedings shall not affect other action taken under the Treasury offset program.

Order

For the foregoing reasons, the administrative wage garnishment proceeding are **TERMINATED.**

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

Done at Washington, D.C.
July 29, 2010

PETER M. DAVENPORT
Chief Administrative Law Judge

Copies to: John F. Shuler, Esquire
Mary Kimball
Dale Theurer