

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 10-0394
Jo Ann Sanchez, n/k/a/)	
Olivarez,)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held October 28, 2010. Jo Ann Olivarez, formerly known as Jo Ann Sanchez, the Petitioner (“Petitioner Olivarez”), participated, representing herself (appearing *pro se*). 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.

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

Summary of the Facts Presented

3. Petitioner Olivarez owes to USDA Rural Development a balance of **\$13,061.53**, in repayment of a \$27,577.00 United States Department of Agriculture Farmers Home Administration loan made in 1990 for a home in Texas, the balance of which is now unsecured (“the debt”). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed September 28, 2010), plus Mary Kimball’s testimony, all of which are admitted into evidence.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$13,061.53** would increase the current balance by \$3,657.23, to \$16,718.76. *See* USDA Rural Development Exhibits, esp. RX-5.

5. Petitioner Olivarez's testimony and exhibits prove that she moved out of the home (the security for the debt) in about 1994, while Eduardo Sanchez, her former husband, remained in the home. *See* Petitioner Olivarez's exhibits, including her Hearing Request statements and Consumer Debtor Financial Statement prepared in June 2010, plus Petitioner Olivarez's testimony, all of which are admitted into evidence.

6. In 1998, the home went through foreclosure sale. By then, \$9,567.43 in interest had accrued. The \$43,819.69 due prior to the foreclosure sale included:

\$ 27,286.39 principal
9,567.43 accrued interest
<u>6,965.87</u> "fee" balance [real property taxes likely included]
 \$ 43,819.69
<u>=====</u>

7. The foreclosure sale in 1998 yielded \$26,500.00, which reduced the \$43,819.69 to \$17,319.69. An additional fee for advertising (\$92.96) increased the debt to \$17,412.65. Treasury offsets and garnishments have paid down the debt by \$4,351.12, reducing the balance to \$13,061.53. *See* RX-4.

8. Petitioner Olivarez works 40 hours per week as a Certified Nurse Aide and is paid [REDACTED] per hour, gross. Petitioner Olivarez's monthly disposable income is roughly [REDACTED] per month (gross pay minus Federal, Social Security, Medicare and vision and dental health insurance withholding). Garnishment at 15% of her disposable pay would yield roughly [REDACTED] per month in repayment of the debt, but she cannot withstand garnishment in that amount without hardship for her family and herself. 31 C.F.R. § 285.11. Petitioner Olivarez and her husband support the two children in their home, in addition to providing for themselves. Her family disposable income (including her husband's disposable income, and he is not obligated to pay the debt) barely meets the family's reasonable monthly living expenses of roughly [REDACTED] per month.

9. When Petitioner Olivarez's necessary contribution to the family's reasonable living expenses is subtracted from her disposable income, she has little remaining available for garnishment without causing hardship. I have taken her family obligations into account in limiting the potential garnishment to repay "the debt" (*see* paragraph 3) to zero per cent (0%) of Petitioner Olivarez's disposable pay through October 2011; and no more than 4% of Petitioner Olivarez's disposable pay thereafter. 31 C.F.R. § 285.11.

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

Discussion

11. Through October 31, 2011, NO garnishment is authorized. Thereafter, garnishment up to 4% of Petitioner Olivarez's disposable pay is authorized. *See* paragraphs 8 and 9. I encourage **Petitioner Olivarez and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Olivarez, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Olivarez, you may choose to offer to the collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less.

12. Petitioner Olivarez has made substantial progress repaying the debt. RX-4.

Findings, Analysis and Conclusions

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

14. Petitioner Olivarez owes the debt described in paragraphs 3 and 4.

15. **Through October 31, 2011, NO garnishment is authorized.** Thereafter, garnishment **up to 4%** of Petitioner Olivarez's disposable pay is authorized. 31 C.F.R. § 285.11.

16. This Decision does not prevent repayment of the debt through *offset* of Petitioner Olivarez's **income tax refunds** or other **Federal monies** payable to the order of Ms. Olivarez.

Order

17. Until the debt is repaid, Petitioner Olivarez 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 **through October 31, 2011**. Thereafter, USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, **up to 4%** of Petitioner Olivarez's disposable pay. 31 C.F.R. § 285.11.

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

Done at Washington, D.C.
this 29th day of October 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