

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0007
Donald E. McCarty, Jr.)	
)	
Petitioner)	Decision and Order

1. The hearing was held on December 10, 2010, as scheduled. Donald E. McCarty, Jr., also known as Donald McCarty, Jr., the Petitioner (“Petitioner McCarty, Jr.”) failed to appear. [Petitioner McCarty, Jr. could not be reached at the telephone number listed on his hearing request, and he provided no other phone number. There was no opportunity to leave a message; it seemed to the Legal Secretary who works with me that, in answer to her calls, someone lifted the receiver and set it back down to disconnect. Petitioner McCarty, Jr. never returned the calls.]

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Ms. Mary E. Kimball. 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 McCarty, Jr. and the collection agency** to work together to **establish a repayment schedule** rather than immediately proceeding with garnishment, even though this Decision authorizes garnishment, up to 15% of Petitioner McCarty, Jr.’s disposable pay. Petitioner McCarty, Jr., obviously, will have to make himself available to the collection agency if he wants to negotiate. *See* paragraph 10.

4. This is Petitioner McCarty, Jr.'s case (he filed the Petition), and in addition to failing to be available for the hearing, Petitioner McCarty, Jr. failed to file with the Hearing Clerk any information. Petitioner McCarty, Jr.'s deadline for that was November 29, 2010.

Summary of the Facts Presented

5. Petitioner McCarty, Jr. owes to USDA Rural Development a balance of **\$10,480.50** (as of November 12, 2010) in repayment of a Farmers Home Administration loan he borrowed in 1994 for a home in Mississippi, the balance of which is now unsecured ("the debt"). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed November 16, 2010), which are admitted into evidence, together with the testimony of Mary Kimball.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$10,480.50** would increase the current balance by \$2,934.54, to \$13,415.04. See USDA Rural Development Exhibits, esp. RX-7.

7. The amount borrowed from USDA Rural Development was \$42,400.00 in 1994. By the time of the foreclosure sale in March 2009, that debt had grown to \$43,834.35:

\$ 35,516.95	Principal Balance prior to sale
\$ 5,097.87	Interest Balance prior to sale
<u>\$ 3,219.53</u>	Fee Balance prior to sale
\$ 43,834.35	Total Amount Due prior to sale
\$ 33,000.00	Total Amount Received from sale

So the sale proceeds did not pay the full amount of what was owed.

See USDA Rural Development Narrative.

8. Petitioner McCarty, Jr. failed to file a Consumer Debtor Financial Statement or any other financial information or anything in response to my Order dated October 28, 2010; consequently there is no evidence before me regarding Petitioner McCarty, Jr.'s disposable pay or any 31 C.F.R. § 285.11 factors. I must presume that Petitioner McCarty, Jr.'s disposable pay supports garnishment, up to 15% of Petitioner McCarty, Jr.'s disposable pay.

9. Petitioner McCarty, Jr. is responsible and capable of negotiating the repayment of the debt with Treasury's collection agency.

Discussion

10. I encourage **Petitioner McCarty, Jr. and the collection agency to negotiate promptly** the repayment of the debt. Petitioner McCarty, Jr., 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 McCarty, Jr., you may choose to offer to compromise the debt for an amount you are able to pay, to settle the claim for less.

Findings, Analysis and Conclusions

11. The Secretary of Agriculture has jurisdiction over the parties, Petitioner McCarty, Jr. and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
12. Petitioner McCarty, Jr. owes the debt described in paragraphs 5 and 6.
13. Garnishment is authorized, up to 15% of Petitioner McCarty, Jr.'s disposable pay. 31 C.F.R. § 285.11.
14. Repayment of the debt may also occur through *offset* of Petitioner McCarty, Jr.'s **income tax refunds** or other **Federal monies** payable to the order of Mr. McCarty, Jr.

Order

15. Until the debt is fully paid, Petitioner McCarty, Jr. shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).
16. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, up to 15% of Petitioner McCarty, Jr.'s disposable pay.

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

Done at Washington, D.C.
this 21st day of December 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