

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0013**
Catherine Nellums,)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on January 19, 2011. Ms. Catherine Nellums, also known as Catherine M. Nellums (“Petitioner Nellums”), participated, representing herself (appeared *pro se*).

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Mary E. Kimball. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
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4300 Goodfellow Blvd
St Louis MO 63120-1703

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Summary of the Facts Presented

3. Petitioner Nellums owes to USDA Rural Development a balance of **\$4,953.88** (as of November 23, 2010) in repayment of a \$35,500.00 United States Department of Agriculture Farmers Home Administration loan made in 1987 for a home in Florida, the balance of which is now unsecured (“the debt”). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed December 16, 2010), 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 **\$4,953.88** would increase the current balance by \$1,387.09, to \$6,340.97. *See* USDA Rural Development Exhibits, esp. RX 7.
5. The amount Petitioner Nellums borrowed in 1987 was \$35,500.00. A USDA letter dated 8/11/97, mailed to P.O. Box 264, Chipley FL 32428-0264, showed \$37,350.19 due. The final figures from the short sale assumption had not yet been incorporated, although July 31, 1997 is shown as the settlement date. RX 5. The short sale assumption in 1997 yielded \$28,785.00. RX 4, RX 5. The “Total Amount Due prior to sale” shown on RX 6 is \$37,520.38. The remaining balance of the debt was \$8,735.38 after the \$28,785.00 was applied. RX 6.
6. The home could be sold in the short sale assumption, but Petitioner Nellums remained liable to repay the \$8,735.38 balance. The \$8,735.38 balance had **not** been canceled. I am persuaded that the balance was not “written off,” because USDA Rural Development has no release of liability in its records, no cancellation of debt 1099 to the Internal Revenue Service, no papers indicating that the debt was paid in full - - instead, USDA Rural Development was collecting the debt, through U.S. Treasury, as shown by the income tax refunds intercepted and applied on the debt in March 1999, in May 2001, and in October 2001. *See* RX 6. Considerable progress repaying the debt resulted from those **offsets** of **income tax refunds**, reducing the remaining balance to **\$4,953.88**. RX 6.
7. Admitted into evidence is the testimony of Petitioner Nellums and Petitioner Nellums’ Hearing Request with letter to Ms. Renda. Perhaps the form(s) Petitioner Nellums would have been required to submit in 1997 for “debt settlement,” following the short sale assumption, were never completed and submitted: USDA Rural Development has no record of receiving them. In evaluating the factors to be considered under 31 C.F.R. § 285.11, I find that Petitioner Nellums cannot withstand garnishment in any amount without hardship. *See* Hearing Request letter to Ms. Renda, paragraph 2. To prevent hardship, potential garnishment to repay “the debt” (*see* paragraph 3) must be limited to zero per cent (0%) of Petitioner Nellums’ disposable pay through January 31, 2012; and no more than 15% of Petitioner Nellums’ disposable pay thereafter. 31 C.F.R. § 285.11.
8. Petitioner Nellums is responsible and willing and able to negotiate the repayment of the debt with Treasury’s collection agency.

Discussion

9. Through January 31, 2012, NO garnishment is authorized. Thereafter, garnishment up to 15% of Petitioner Nellums’ disposable pay is authorized. *See* paragraphs 6 and 7. I encourage **Petitioner Nellums and the collection agency** to **negotiate promptly** the repayment of the debt. Petitioner Nellums, 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 Nellums, 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.

Findings, Analysis and Conclusions

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

11. Petitioner Nellums owes the debt described in paragraphs 3 and 4.

12. **Through January 31, 2012, NO garnishment is authorized.** Thereafter, garnishment **up to 15%** of Petitioner Nellums' disposable pay is authorized. 31 C.F.R. § 285.11.

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

Order

14. Until the debt is repaid, Petitioner Nellums 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).

15. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment **through January 31, 2012**. Thereafter, USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, **up to 15%** of Petitioner Nellums' disposable pay. 31 C.F.R. § 285.11.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties. **Two Consumer Debtor Financial Statement forms shall be enclosed to Petitioner Nellums.**

Done at Washington, D.C.
this 19th day of January 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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