

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0183
Cynthia J. Pointer)	
)	
Petitioner)	Decision and Order

1. The hearing was held by telephone on June 14, 2011. Ms. Cynthia J. Pointer, the Petitioner (“Petitioner Pointer”), participated, representing herself.

2. 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. 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

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Summary of the Facts Presented

3. Petitioner Pointer owes to USDA Rural Development a balance of **\$5,914.10** (as of April 26, 2011) in repayment of loans made in 1994 (“the debt”). *See* USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed April 28, 2011), 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 **\$5,914.10** would increase the current balance by \$1,655.95, to \$7,570.05. *See* USDA Rural Development Exhibits, esp. RX 7.

5. Petitioner Pointer’s testimony and Narrative and exhibits (filed May 25, 2011),

which are admitted into evidence, prove that she is paid [REDACTED] per hour gross pay, working as a homemaker's aide only about 80 hours per month. Petitioner Pointer's gross pay is currently about [REDACTED] per month, or about [REDACTED] per week. Disposable pay is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld. Petitioner Pointer's disposable pay does not support garnishment, which would create hardship. 31 C.F.R. § 285.11.

6. Additionally, Petitioner Pointer should not be garnished when her disposable pay is [REDACTED] per week or less. Petitioner Pointer's [REDACTED] gross pay per week is **less** than the [REDACTED] minimum disposable pay per week; *see* 29 C.F.R. § 870.10. [Petitioner Pointer's disposable pay **does not exceed** "an amount equivalent to thirty times the minimum (hourly) wage" for a week, currently [REDACTED] per week (30 x \$7.25).¹]

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

Discussion

8. NO garnishment is authorized. *See* paragraphs 5 and 6. Petitioner Pointer, you may choose to negotiate with the collection agency the repayment of the debt. Petitioner Pointer, 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 Pointer, 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.

9. Petitioner Pointer has made substantial progress repaying, primarily through her income tax refunds.

Findings, Analysis and Conclusions

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

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

¹ The regulation at 31 C.F.R. § 285.11 includes the following restriction on garnishment: "The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay (for that week) exceeds an amount equivalent to thirty times the minimum (hourly) wage. See 29 CFR 870.10."

12. **NO garnishment is authorized.** 31 C.F.R. § 285.11.
13. This Decision does not prevent repayment of the debt through *offset* of Petitioner Pointer's **income tax refunds** or other **Federal monies** payable to the order of Ms. Pointer.

Order

14. Until the debt is repaid, Petitioner Pointer 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.

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

Done at Washington, D.C.
this 14th day of June 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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