

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0291
Griselda Zuniga)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held as scheduled on August 23, 2011. Ms. Griselda Zuniga (“Petitioner Zuniga”), did not participate. (Petitioner Zuniga did not participate by telephone: when we telephoned the number she provided in her Hearing Request, through several attempts during the 10 minutes following the hearing start time, and again 40 minutes later, we received a busy signal. Petitioner Zuniga did not provide any other phone number where she could be reached.)

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
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 Zuniga owes to USDA Rural Development a balance of **\$32,498.80** (as of July 14, 2011) in repayment of a United States Department of Agriculture Farmers Home Administration loan made in 1999, for a home in Texas. The balance is now unsecured (“the debt”). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed August 5, 2011), which are admitted into evidence, together with the testimony of Mary Kimball.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$32,498.80** would increase the current balance by \$9,099.66, to \$41,598.46. *See* USDA Rural Development Exhibits, esp. RX 7.

5. The amount Petitioner Zuniga borrowed in 1999 was \$62,900.00. [Petitioner Zuniga was **not** a minor in 1999. *See* Petitioner Zuniga's Hearing Request.] By the time of the foreclosure sale in 2003, the debt had grown to \$93,259.24:

\$ 58,485.21	Principal Balance prior to foreclosure sale
\$ 7,606.04	Interest Balance prior to foreclosure sale
\$ 18,085.74	Payoff to first lien holder
\$ 7,928.07	Remaining Fees Balance prior to foreclosure sale
<u>\$ 1,154.18</u>	Negative Escrow Balance prior to foreclosure sale
\$ 93,259.24	Total Amount Due prior to foreclosure sale
<u>=====</u>	
- \$ 36,501.00	Proceeds from foreclosure sale
\$ 56,758.24	Unpaid in 2003

RX 6 and USDA Rural Development Narrative.

Another \$24,259.44 applied to the debt since then leaves **\$32,498.80** unpaid now (excluding the potential remaining collection fees). *See* RX 6, esp. p. 2, and USDA Rural Development Narrative.

6. Petitioner Zuniga's Hearing Request was late (more than a year late), so as of July 14, 2011, she had already experienced garnishment, for more than a year, and **offset** of **income tax refunds**. Petitioner Zuniga's progress in repaying the debt is detailed on RX 6, p. 2, plus Narrative.

7. Even though Petitioner Zuniga failed to file a Consumer Debtor Financial Statement, or anything, in response to my Order dated August 5, 2011, her Hearing Request letter dated May 27, 2011, states that she supports all five of her children that she had with her co-borrower, Buddy Vasquez. Based on roughly [REDACTED] per month garnishment through the first half of 2011, I calculate Petitioner Zuniga's current disposable pay to be roughly [REDACTED] per month. **Petitioner Zuniga should not be garnished when her disposable pay is \$217.50 per week or less.** (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.)

8. Taking into account the factors to be considered under 31 C.F.R. § 285.11, I find that potential garnishment to repay “the debt” (*see* paragraph 3) should be and will be limited to the following amounts of Petitioner Zuniga’s disposable pay:

(a) through February 2012, zero per cent (0%);

(b) beginning March 2012, through February 2014, up to 5%; and

(c) beginning no sooner than March 2014, following review of Petitioner Zuniga’s financial circumstances to determine what amount of garnishment she can withstand without financial hardship, up to 10%.

USDA Rural Development **is required to return** any amounts garnished in violation of 29 C.F.R. § 870.10, currently \$217.50 per week or less.

9. Petitioner Zuniga is responsible and able to negotiate the repayment of the debt with Treasury’s collection agency.

Discussion

10. NO garnishment is authorized through February 2012. Thereafter, garnishment of Petitioner Zuniga’s disposable pay is authorized as shown in paragraph 8. I encourage **Petitioner Zuniga and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Zuniga, 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 Zuniga, 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. You may ask that the debt be apportioned between you and your co-borrower.

Findings, Analysis and Conclusions

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

12. Petitioner Zuniga owes the debt described in paragraphs 3, 4 and 5.

13. **NO garnishment is authorized through February 2012.** Beginning March 2012 through February 2014, **garnishment up to 5% of Petitioner Zuniga’s disposable pay** is authorized. Beginning no sooner than March 2014, following review of Petitioner Zuniga’s financial circumstances to determine what amount of garnishment she can withstand without

financial hardship, **garnishment up to 10% of Petitioner Zuniga's disposable pay** is authorized. 31 C.F.R. § 285.11.

14. **NO refund** to Petitioner Zuniga of monies already collected is appropriate, and no refund is authorized, **UNLESS** Petitioner Zuniga has been garnished when her disposable pay did not exceed “an amount equivalent to thirty times the minimum (hourly) wage” for a week, currently \$217.50 per week (30 x \$7.25).¹ USDA Rural Development **is required to return** any amounts garnished in violation of 29 C.F.R. § 870.10, currently \$217.50 per week or less.

15. Repayment of the debt may also occur through **offset** of Petitioner Zuniga's **income tax refunds** or other **Federal monies** payable to the order of Ms. Zuniga.

Order

16. Until the debt is repaid, Petitioner Zuniga 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).

17. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment through February 2012. Beginning March 2012 through February 2014, **garnishment up to 5% of Petitioner Zuniga's disposable pay** is authorized. Beginning no sooner than March 2014, following review of Petitioner Zuniga's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, **garnishment up to 10% of Petitioner Zuniga's disposable pay** is authorized. 31 C.F.R. § 285.11.

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

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.”

Done at Washington, D.C.
this 29th day of August 2011

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