

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0355
Armando Velasquez)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held as scheduled on September 20, 2011. Armando Velasquez, the Petitioner (“Petitioner Armando Velasquez”), who represents himself (appears *pro se*), failed to appear. [He failed to appear by telephone: (a) the phone number Petitioner Armando Velasquez provided on his Hearing Request was called and a message requesting a return call and giving my office phone number was left on a recording, but the call was not returned; and (b) Petitioner Armando Velasquez failed to respond to my Order filed August 30, 2011, which, among other things, instructed him to provide a telephone number for the hearing.]

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

3. I encourage **Petitioner Armando Velasquez and Treasury’s collection agency** to work together to **establish a repayment schedule** rather than proceeding with garnishment, even though this Decision authorizes garnishment in a limited amount beginning April 2012. Petitioner Armando Velasquez, obviously, will have to make himself available to Treasury’s collection agency if he wants to negotiate. See paragraph 12.

Summary of the Facts Presented

4. USDA Rural Development's Exhibits, plus Narrative, Witness & Exhibit List, were filed on August 26, 2011, and are admitted into evidence, together with the testimony of Ms. Kimball.

5. Petitioner Armando Velasquez owes to USDA Rural Development **\$7,004.58** in repayment of a USDA Farmers Home Administration loan borrowed in 1989 for a home in Texas, the balance of which is now unsecured ("the debt").

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$7,004.58**, would increase the current balance by \$1,961.28, to \$8,965.86. *See* USDA Rural Development Exhibits, esp. RX 5.

7. Both Petitioner Armando Velasquez and his wife Norma Velasquez stated on their Hearing Requests that they do not own the house, and that they should not have to pay for something they do not own. Their theory is not legally correct and is not mathematically correct. The amount they borrowed from USDA Rural Development was \$38,000.00 in 1989. By the time of the short sale on May 29, 1997, Petitioner Armando Velasquez's debt had grown to \$42,708.63.

\$35,306.29	unpaid principal
4,089.24	unpaid interest, and
<u>3,313.10</u>	unpaid fees and fee interest, likely mostly real estate taxes
\$42,708.63	
=====	

RX 4, page 1.

From the sale of the home (for \$26,000.00), \$23,455.80 was applied to reduce the balance. Collections since then (\$12,248.25) have further reduced the balance, to **\$7,004.58**, as of August 23, 2011. RX 4, and RX 5.

8. The amount of Petitioner Armando Velasquez's disposable income is not available in the evidence before me. [Disposable income 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.] Numerous *offsets* during the past 10 years, probably mostly Federal income tax refunds, have reduced the balance substantially (by \$12,248.25). In addition to *offsets*, garnishment up to 15% of Petitioner Armando Velasquez's disposable pay can occur unless he cannot withstand garnishment in

that amount without hardship. 31 C.F.R. § 285.11. The only indication I have of hardship is his wife's statement in her Hearing Request that she makes little money to pay medicine.

9. This is Petitioner Armando Velasquez's case (he filed the Petition), and in addition to failing to be available for the hearing, Petitioner Armando Velasquez failed to file with the Hearing Clerk any information, such as a completed Consumer Debtor Financial Statement. Petitioner Armando Velasquez's deadline for filing was September 16, 2011 (*see* my Order filed August 30, 2011). Petitioner Armando Velasquez failed to file anything; he has provided no information about his income and expenses and no indication of hardship. I have no way of evaluating the factors to be considered under 31 C.F.R. § 285.11; normally I would presume that Petitioner Armando Velasquez can withstand garnishment up to 15% of his disposable pay. [Petitioner Armando Velasquez's wife Norma Velasquez also failed to file with the Hearing Clerk any information, such as a completed "Consumer Debtor Financial Statement," and she also failed to appear to testify. She did state in her Hearing Request that she makes little money to pay medicine.]

10. Based on Petitioner Armando Velasquez's wife's statement in her Hearing Request that she makes little money to pay medicine, to prevent hardship, garnishment to repay "the debt" (*see* paragraph 6) will be limited to **0%** of Petitioner Armando Velasquez's disposable pay through March 2012; then **up to 7%** of Petitioner Armando Velasquez's disposable pay beginning April 2012 through March 2013; then **up to 15%** of Petitioner Armando Velasquez's disposable pay thereafter. 31 C.F.R. § 285.11.

11. Petitioner Armando Velasquez is responsible and able to negotiate the disposition of the debt with Treasury's collection agency. Both Mr. and Mrs. Velasquez could be on the phone together when they call Treasury's collection agency, if they would like.

Discussion

12. Through March 2012, **no** garnishment is authorized. Beginning April 2012 through March 2013, garnishment **up to 7%** of Petitioner Armando Velasquez's disposable pay is authorized; and thereafter, garnishment **up to 15%** of Petitioner Armando Velasquez's disposable pay is authorized. *See* paragraphs 9, 10 and 11. I encourage **Petitioner Armando Velasquez and Treasury's collection agency to negotiate promptly** the repayment of the debt. Petitioner Armando Velasquez, 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 Armando Velasquez, 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

13. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Armando Velasquez and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
14. Petitioner Armando Velasquez owes the debt described in paragraphs 5, 6 and 7.
15. **Garnishment is authorized**, as follows: through March 2012, **no** garnishment. Beginning April 2012 through March 2013, garnishment **up to 7%** of Petitioner Armando Velasquez's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Armando Velasquez's disposable pay. 31 C.F.R. § 285.11.
16. Repayment of the debt may also occur through *offset* of Petitioner Armando Velasquez's **income tax refunds** or other **Federal monies** payable to the order of Mr. Velasquez.

Order

17. Until the debt is repaid, Petitioner Armando Velasquez 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).
18. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through March 2012. Beginning April 2012 through March 2013, garnishment up to 7% of Petitioner Armando Velasquez's disposable pay is authorized; and garnishment up to 15% of Petitioner Armando Velasquez's disposable pay thereafter. 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 20th day of September 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