

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
Marsha J. Tickel, n/k/a)	AWG Docket No. 11-0346
)	
Marsha J. Van Buren,)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held as scheduled on September 14, 2011. Marsha J. Van Buren, the Petitioner, formerly known as Marsha J. Tickel (“Petitioner Van Buren”), 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
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. 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.
 4. Petitioner Van Buren's completed "Consumer Debtor Financial Statement" plus the accompanying documents filed on August 31 and again on September 7, 2011; plus

Petitioner Van Buren's Hearing Request including all accompanying documents, are admitted into evidence, together with the testimony of Petitioner Van Buren.

5. Petitioner Van Buren owes to USDA Rural Development **\$15,585.83** (as of August 22, 2011, *see RX 7*) in repayment of a USDA Farmers Home Administration loan borrowed in 1990 for a home in Oklahoma, 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 **\$15,585.83**, would increase the current balance by \$4,364.03, to \$19,949.86. *See* USDA Rural Development Exhibits, esp. RX 7.

7. The amount Petitioner Van Buren borrowed with her then-husband, Bert Tickel, from USDA Farmers Home Administration in 1990 was \$38,000.00. Petitioner Van Buren explained in her Hearing Request and her testimony that Bert Tickel, her former husband, her co-borrower, was awarded the home and is responsible for the debt. The copy of the Divorce Decree from 1997, which Petitioner Van Buren filed on August 31, 2011, also proves that she is correct. Her former husband was ordered to pay the debt ("any mortgage indebtedness on the real property") and ordered to hold her harmless from all liability for the debt, including all attorney fees and costs incurred in defense of creditors' suits or in prosecution of any action to enforce the order. Petitioner Van Buren's former husband has failed to meet his obligations regarding the debt.

8. In 2000, Petitioner Van Buren's former husband re-amortized the account, by adding the amount that was delinquent to the principal. The principal amount due on the account became \$42,522.90. This re-amortization did not change the amount owed, but merely allowed the debt to become current. By the time of the short sale on May 18, 2001, the debt had grown to \$47,737.77.

\$42,437.22	unpaid principal
4,562.27	unpaid interest, and
<u>738.28</u>	unpaid fees
 \$47,737.77 =====	

RX 6, page 1.

From the sale of the home (for \$19,000.00), \$18,215.00 was applied to reduce the balance, leaving a balance owed after the sale of \$29,522.77. Since the short sale, no additional interest has accrued, and numerous collections since then (\$13,936.94 net) have further reduced the balance, to **\$15,585.83** as of August 22, 2011. RX 6 and Narrative. Even though Petitioner Van Buren's former husband was ordered to pay the debt, this remains

Petitioner Van Buren's debt also. USDA Rural Development is still entitled to collect from Petitioner Van Buren.

9. When Petitioner Van Buren entered into the borrowing transaction with her co-borrower Bert Tickel, in 1990, certain responsibilities were fixed, as to each of them, that were addressed but not erased by the Divorce Decree. Although Petitioner Van Buren may pursue the co-borrower for monies collected from her on the debt, that does not prevent USDA Rural Development from collecting from her. Thus, I conclude that Petitioner Van Buren still owes the balance of **\$15,585.83** (excluding potential collection fees), as of August 22, 2011, and that USDA Rural Development may collect that amount from her. [The debt is her co-borrower's and her joint-and-several obligation.]

10. Petitioner Van Buren works in management and is very responsible. Petitioner Van Buren's gross pay averages about \$1,200.00 per month; her disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly \$1,000.00 per month. [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.]

11. Numerous **offsets** and wage garnishments during the past 9 to 10 years have reduced the balance substantially (by \$13,936.94). In addition to **offsets**, wage garnishment up to 15% of Petitioner Van Buren's disposable pay can occur unless she cannot withstand garnishment in that amount without hardship. 31 C.F.R. § 285.11. Although garnishment at 15% of Petitioner Van Buren's disposable pay could yield roughly \$150.00 per month in repayment of the debt, she cannot currently withstand garnishment in that amount without financial hardship. Petitioner Van Buren's reasonable and necessary living expenses consume most of her disposable pay, even before her monthly payments on her other debts (about \$600.00 per month, not including her mortgage) are considered. See Consumer Debtor Financial Statement. Although Petitioner Van Buren has the support of her husband, he is **not** liable to repay the debt at issue here.

12. Petitioner Van Buren's disposable pay (within the meaning of 31 C.F.R. § 285.11) does **not** currently support garnishment and **no** garnishment is authorized through **October 2013**. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Van Buren's disposable pay through **October 2013**; then, beginning no sooner than November 2013, following review of Petitioner Van Buren's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Van Buren's disposable pay is authorized. 31 C.F.R. § 285.11.

13. Petitioner Van Buren is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

14. Through **October 2013, no** garnishment is authorized. Then, beginning no sooner than November 2013, following review of Petitioner Van Buren's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Van Buren's disposable pay is authorized. *See* paragraphs 10, 11 and 12. I encourage **Petitioner Van Buren and Treasury's collection agency to negotiate** the repayment of the debt. Petitioner Van Buren, 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**. You may want to request apportionment of debt between you and the co-borrower. 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

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

16. Petitioner Van Buren owes the debt described in paragraphs 5 through 9.

17. **Garnishment is authorized**, as follows: **through October 2013, no** garnishment. Then, beginning no sooner than November 2013, following review of Petitioner Van Buren's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Van Buren's disposable pay. 31 C.F.R. § 285.11.

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

Order

19. Until the debt is repaid, Petitioner Van Buren 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).

20. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through October 2013. Beginning no sooner than November 2013, following review of Petitioner Van Buren's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Van Buren'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.

Done at Washington, D.C.
this 26th 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