

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0341

In re: BETTY HEATON,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Betty Heaton (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due, and if established, the propriety of imposing administrative wage garnishment. By Order issued on August 12, 2011, the parties were directed to provide information and documentation concerning the existence of the debt. In addition, the matter was set for a telephonic hearing to commence on September 28, 2011 and deadlines for filing documents with the Hearing Clerk’s Office were established.

The Respondent filed a Narrative, together with supporting documentation¹ on September 15, 2011. Petitioner did not submit documentation. The hearing commenced as scheduled. At the hearing, Petitioner represented herself and testified on her own behalf. Testimony was received from Mary E. Kimball, Accountant for the New Program Initiatives Branch of Rural Development, USDA Rural Development (“USDA RD”), located in Saint Louis, Missouri.

¹ References to Respondent’s exhibits herein shall be denoted as “RX-#”.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered:

FINDINGS OF FACT

1. On February 3, 1995, the Petitioner and her then husband assumed a loan from another borrower of the United States Department of Agriculture's RD in the amount of \$29,300.00 for the purchase of real property in Chillicothe, Missouri. RX-1; RX-2.
2. On that date, Petitioner and her then husband also received a home mortgage loan in the amount of \$10,480.00. RX-1; RX 2.
3. Petitioner and her then husband executed a Promissory Note and a Real Estate Deed of Trust as evidence of their indebtedness. RX-1; RX 2.
4. RD established the two loans in two separate accounts, #97889 and #97876 for the purposes of loan servicing. RX-3.
5. Petitioner and her husband subsequently defaulted on the loans and Notice of Acceleration was issued by RD on September 24, 1997, which action was upheld upon appeal to USDA's Appeal Division. RX 4; RX 5.
6. Foreclosure action was taken, and at the time of foreclosure sale, the debt owed on account #97889 was \$42,364.94 (\$38,802.30 in principal and \$2,562.64 in interest); and the debt owed on account #97876 was \$10,349.87 (\$10,185.87 in principal and \$164.00 in interest) for a total indebtedness of \$52,714.81. RX-5; RX 6.
7. The real property was sold on June 22, 1998 for \$18,500.00. RX 6.
8. After the proceeds of the sale were applied, the remaining debt was \$34,214.81 (\$23,864.94 on account #97880 and \$10,349.87 on account # 97876). RX 5; RX 6.

9. An additional \$10,036.45 through offset has since been applied against the debt, which was referred to the U.S. Department of Treasury (“Treasury”) and is currently documented as \$24,178.36, plus potential fees of \$6,769.94 for a total of \$30,948.30. RX-7.

10. In July, 2011, Treasury, through its agent, issued a notice to Petitioner of intent to garnish her wages.

11. Petitioner timely requested a hearing, which was held by telephone on September 28, 2011.

12. After hearing an explanation for how the debt arose, Petitioner did not contest the validity of the debt.

13. Petitioner credibly testified that she believed that her ex-husband was not being subjected to tax refund offset or wage garnishment.

14. Petitioner credibly testified that she is unemployed and has no income.

15. Petitioner’s two adult children live with her and pay the expenses of the household, including rent and utilities, out of wages from their minimum wage jobs.

16. Petitioner is facing eviction from her landlord and the cost of rent at alternate housing will exceed her current rent of [REDACTED]

17. Despite the contributions of Petitioner’s daughters, the family income exceeds the family monthly expenses, and Petitioner is unable to liquidate the debt owed at this time.

18. Petitioner has no expectation of improvement in her financial situation for the foreseeable future.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Petitioner (jointly and severally with her ex-husband) is indebted to USDA RD in the amount of \$24,178.36, exclusive of potential Treasury fees for the mortgage loans extended to her.
3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
4. The Petitioner is under a financial hardship at this time.
5. The Respondent is entitled to administratively garnish the wages of the Petitioner when the financial hardship is anticipated to ease.
6. All wage garnishment actions shall be suspended for a period of at least two years.
7. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall **NOT** be subjected to administrative wage garnishment at this time. Treasury may re-evaluate Petitioner's financial capacity to withstand wage garnishment not less than two (2) years from the date of this Order.

Petitioner is encouraged in the interim to negotiate and discuss the liability for the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Petitioner may direct questions to RD's representative Mary Kimball, c/o:

USDA New Program Initiatives Branch
Rural Development Centralized Servicing Center
4300 Goodfellow Blvd. F-22
St. Louis, MO 63120
314-457-5592
314-457-4426 (facsimile)

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

So Ordered this _____ day of September, 2011 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge