

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 11-0299
)
Tonya Smith,)
)
Petitioner) **Decision and Order**

On December 12, 2012, at 2:30 P.M. Eastern Time, a hearing by telephone was conducted to consider the merits of a Petition filed by Petitioner, Tonya Smith, seeking relief from the administrative garnishment of her wages initiated against her on behalf of the United States Department of Agriculture’s Rural Development Division (USDA-RD). At the hearing, Petitioner appeared and represented herself without counsel. USDA-RD was represented by Michele Tanner. Both Petitioner and Ms. Tanner were sworn. Ms. Tanner summarized the various exhibits (RX-1 through RX-8) filed on behalf of USDA-RD. Petitioner verified that she had borrowed \$77,541.00 from USDA-RD, on February 7, 2003, for the purchase of a residence located in Seagoville, Texas. The loan was secured by a promissory note and a valid Texas Deed of Trust. The house was sold, on November 4, 2008, at a foreclosure sale when Petitioner was unable to make the loan payments. At the time of the foreclosure sale, Petitioner owed \$121,497.37 for principal, accrued interest and fees. After the proceeds from the sale were posted and fees applied, Petitioner owed a remaining balance of \$65,454.22. Since the sale, USDA-RD has received \$6,638.98 and the remaining balance now owed is \$58,815.24 plus collection fees to Treasury Department of \$16,468.27 for a total of \$75,283.51.

Petitioner has two children, ages 18 and 11, who attend school and are dependent upon Petitioner for their sole support. Petitioner has been employed for the past 11 years by AT&T performing clerical work for which she is paid, every two weeks, a net salary of \$ [REDACTED]. Her monthly expenses are: rent-[REDACTED]; utilities-\$ [REDACTED]; water-[REDACTED]; cell phone (self and 2 children)-[REDACTED]; automobile payments-[REDACTED]; gasoline-\$ [REDACTED]; insurance through employer-\$ [REDACTED]; car insurance-[REDACTED]; food-\$ [REDACTED]. These monthly expenses total [REDACTED], and when deducted from her \$ [REDACTED] net monthly income, leave Petitioner \$ [REDACTED] to pay all other bills to support herself and her two children.

USDA-RD has proven the existence of the described debt owed it by Petitioner pursuant to the mortgage loan that was not fully paid. Petitioner on the other hand has shown that she will suffer financial hardship should collection of any portion of the debt be allowed within the next ninety days. During those ninety days, she shall consult an attorney to determine whether she should file proceedings in bankruptcy to extinguish the debt. In the event Petitioner does not so file, after the expiration of ninety days from the date of this decision and order, her financial circumstances are such that to avoid financial hardship to her, no more than \$100.00 may then be administratively garnished from any of the paychecks she receives bi-weekly.

It is hereby so ordered.

The Hearing Clerk's Office is directed to serve a copy of this Decision and Order on each of the parties.

Dated: December 13, 2011

Victor W. Palmer
Administrative Law Judge