

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Tricia Templonuevo,)	
)	Docket No. 12-0037
f/k/a Tricia L. Boesche)	
)	
Petitioner)	Decision and Order

Appearances:

Tricia Templonuevo, formerly known as Tricia L. Boesche, the Petitioner, representing herself (appearing *pro se*).

Michelle Tanner, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, for the Respondent (USDA Rural Development).

1. The hearing by telephone was held as scheduled on January 18, 2012. Tricia Templonuevo, the Petitioner, formerly known as Tricia L. Boesche (“Petitioner Templonuevo”), participated, representing herself (appears *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 Michelle Tanner.

Summary of the Facts Presented

3. USDA Rural Development’s Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List, were filed on December 19, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner.
4. Petitioner Templonuevo’s letter dated December 27, 2011, plus completed “Consumer Debtor Financial Statement,” plus Exhibits PX 1 through PX 2, were filed on January 9, 2012, and are admitted into evidence, together with the testimony of Petitioner

Templonuevo, together with her Hearing Request and all accompanying documents (filed October 26, 2011).

5. Petitioner Templonuevo owes to USDA Rural Development **\$41,658.77** (as of December 14, 2011), in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 3, esp. p. 2) for a loan made in 2005, the balance of which is now unsecured (“the debt”). Petitioner Templonuevo borrowed, together with Chad C. Hiltner, to buy a home in Minnesota. [The loan balance will change, because garnishment is ongoing; the balance will likely have been reduced by the time I sign this Decision.]

6. The *Guarantee* (RX 3) establishes an **independent** obligation of Petitioner Templonuevo, “I certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to recover on the Federal debt directly from me. The Agency’s right to collect is independent of the lender’s right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender.” RX 3, p. 2.

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$41,658.77**, would increase the balance by \$11,664.46, to \$53,323.23. See USDA Rural Development Exhibits, esp. RX 11.

8. Petitioner Templonuevo works as a front desk supervisor 40 hours per week, making \$17.50 per hour. Petitioner Templonuevo’s \$184.00 health insurance premium is deducted every two weeks. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is difficult to calculate without pay stubs. [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.]

9. Although garnishment (presumably at 15% of Petitioner Templonuevo’s disposable pay), has been ongoing (RX 11, p. 2), Petitioner Templonuevo has undergone financial hardship as a result. Petitioner Templonuevo, together with her husband, has two children to support (her child who is 7 years old and her child who is less than a year old), in addition to herself. Her husband has his own debt, including back taxes (he is paying roughly \$255.00 per month on an \$81,000.00 balance) for a restaurant he owned, and he is not responsible to pay “the debt” (see paragraph 5) that is the subject of the hearing. Their living expenses are reasonable, and they have had some help from parents to have their motor vehicles. The hospital and clinic bills from the birth of her youngest child are a heavy burden (Petitioner Templonuevo’s health insurance has a \$4,200.00 deductible), but the bulk of the hospital and clinic bills may be fully paid within this year. Petitioner Templonuevo

has day care expenses, estimated at \$300.00 per month. She and her husband have credit card payments of about \$375.00 per month, not counting future purchases.

10. To prevent hardship, potential garnishment to repay “the debt” (*see* paragraph 5) must be limited to **0%** of Petitioner Templonuevo’s disposable pay through February 2013; then **up to 7%** of Petitioner Templonuevo’s disposable pay beginning March 2013 through February 2015; then **up to 15%** of Petitioner Templonuevo’s disposable pay thereafter. 31 C.F.R. § 285.11.

11. Petitioner Templonuevo is responsible and willing and able to negotiate the disposition of the debt with Treasury’s collection agency.

Discussion

12. Through February 2013, no garnishment is authorized. Beginning March 2013 through February 2015, garnishment up to 7% of Petitioner Templonuevo’s disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Templonuevo’s disposable pay is authorized. *See* paragraphs 8, 9 and 10. I encourage **Petitioner Templonuevo and the collection agency to negotiate** the repayment of the debt. Petitioner Templonuevo, 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 Templonuevo, 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**. Petitioner Templonuevo, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Templonuevo owes the debt described in paragraphs 5, 6 and 7.

15. When Petitioner Templonuevo entered into the borrowing transaction with her co-borrower Mr. Chad C. Hiltner, certain responsibilities were fixed, as to each of them. [The debt is her co-borrower’s and her joint-and-several obligation.] If Petitioner has any recourse against her co-borrower for reimbursement for amounts she has paid on the debt, she may want to pursue that. USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Templonuevo. [And, likewise, USDA Rural

Development could collect, legally, the entire unpaid balance of the debt from Petitioner Templonuevo's co-borrower.]

16. **Garnishment is authorized**, as follows: through February 2013, **no** garnishment. Beginning March 2013 through February 2015, garnishment **up to 7%** of Petitioner Templonuevo's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Templonuevo's disposable pay. 31 C.F.R. § 285.11.

17. I am **NOT**, however, ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Templonuevo's pay, to be returned to Petitioner Templonuevo.

18. Repayment of the debt may occur through *offset* of Petitioner Templonuevo's **income tax refunds** or other **Federal monies** payable to the order of Mrs. Templonuevo (whether or not garnishment is authorized).

Order

19. Until the debt is repaid, Petitioner Templonuevo 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 February 2013. Beginning March 2013 through February 2015, garnishment **up to 7%** of Petitioner Templonuevo's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Templonuevo'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 24th day of January 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Michelle Tanner, Appeals Coordinator
USDA / RD Centralized Servicing Center
Bldg 105 E, FC-244
4300 Goodfellow Blvd
St Louis MO 63120-1703
michelle.tanner@stl.usda.gov

314-457-5775 phone
314-457-4547 FAX

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