

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0127

In re: DOREEN JENSEN,
Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Doreen Jensen (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development (“USDA-RD”; “Respondent”), and if established, the propriety of imposing administrative wage garnishment.

I. PROCEDURAL HISTORY

On August 6, 2010, Petitioner requested a hearing pursuant to a notice of intent to garnish her wages. Her request for a hearing was deemed untimely filed, and her wages were garnished. Petitioner’s request was not forwarded to OALJ until January 11, 2011. By Order issued on February 10, 2011, a hearing was scheduled and deadlines for the submission of evidence were established. The parties timely filed evidence, hereby identified as PX-1 (Petitioner’s consumer debtor financial statement dated December 12, 2010) and RX-1 through RX-9 (Respondent’s narrative and supporting documents). On September 28, 2011, Petitioner filed a second, undated consumer debtor financial statement, identified as PX-2.

The hearing was continued at the request of Petitioner’s counsel, and was rescheduled and continued several times thereafter. Finally, on September 29, 2011, I held a telephone hearing

which was attended by Petitioner and her counsel and the representative for Respondent USDA-RD, Mary Kimball. Upon Petitioner's motion regarding the sufficiency of the evidence, I directed USDA-RD to file additional documentation regarding Petitioner's accounts with the agency. I continued the hearing, and memorialized my instructions in an Order issued October 3, 2011.

On October 14, 2011, USDA-RD filed additional documents, identified as RX-10 through RX-13, which included a copy of Petitioner's USDA-RD accounts, documents related to the foreclosure sale of what was Petitioner's home, and a copy of her account with Treasury. Subsequently, the hearing was scheduled to reconvene on January 11, 2012.

On January 11, 2012, I resumed the telephone hearing with the parties. Michelle Tanner represented USDA-RD and Petitioner attended with her counsel. Ms. Tanner and Petitioner testified. I made findings of fact and conclusions of law that are discussed in detail herein, below. Petitioner's counsel again raised questions regarding the completeness of the evidence. There was no evidence of transactions for the year 2005 in Petitioner's statement of account. Accordingly, I held the record open pending the filing of those account records, and any further objection from Petitioner.

On January 17, 2012, USDA-RD filed the missing documents. Petitioner has not filed an objection. The record is now CLOSED

II. FINDINGS OF FACT

Based upon all of the evidence of record, the following Findings of Fact shall be entered:

1. On October 31, 1990, the Petitioner assumed an existing loan from USDA in the amount of \$19,920.26 (Loan 1) for the purchase of real property located in Chestertown, MD, which was evidenced by an Assumption Agreement executed on that date. RX-1.

2. On October 31, 1990, Petitioner also obtained directly from USDA a loan for the purchase of the same real property in the amount of \$55,100.00 (Loan 2), which was evidenced by a Promissory Note and Real Estate Mortgage. RX-2 and RX-3.
3. USDA-RD established two separate accounts for these loans. RX-4.
4. On April 28, 1992, Petitioner reamortized the accounts, which had become delinquent, and which resulted in new principal amounts due of \$20,953.00 (Loan 1) and \$57,824.80 (Loan 2). RX-5.
5. The accounts became delinquent again, and on October 27, 1997, USDA sent Petitioner a notice of acceleration. RX-6.
6. On May 18, 1998, the property was sold at a foreclosure sale which yielded \$65,558.00 that was applied against the balance due on the combined accounts of \$85,956.31, consisting of principal, interest, and fees. RX-13.
7. The balance on Loan 1 after sale proceeds were applied was \$351.35 and the balance on Loan 2 after sale proceeds were applied was \$20,197.42. RX-13.
8. When the unpaid balances on Petitioner's accounts were not satisfied, the accounts were referred to Treasury within the statutory period. RX 7.
9. Treasury collected funds from Petitioner in the form of tax refund offsets and wage garnishments, and the amount remaining for collection at Treasury is \$17,334.84, plus potential fees of \$4,853.75. RX 7; RX 10.
10. Petitioner's request for a hearing was timely filed, but was treated as untimely filed, thereby triggering the garnishment of her wages during the period from August, 2010 through March, 2011. RX 13.

11. Petitioner's account was charged with undocumented costs related to the foreclosure sale of the real property securing the loans. RX-12.

12. Petitioner's most recent consumer debtor financial statement demonstrates through a comparison of her income and expenses that Petitioner could withstand wage garnishment, but not at the statutory and regulatory limit. PX 2.

III. CONCLUSIONS OF LAW

Based upon all of the evidence of record, the following Conclusions of Law and Order shall be entered:

1. The Secretary has jurisdiction in this matter.

2. USDA-RD established that the Petitioner is indebted to USDA RD for the balance due on loans she acquired to purchase real property.

3. The amount of the indebtedness due to be collected at Treasury is \$17,334.84, exclusive of potential Treasury fees.

4. Although I credit the testimony that Petitioner's account was charged for "recoverable costs" related to the foreclosure sale of the property, USDA-RD was unable to document to whom certain payments were made, and accordingly, Petitioner's account must be credited with those undocumented payments in the amounts of \$150.96; \$693.00; \$222.00; \$356.40; and \$118.00. See, RX 12.

5. Because I deem Petitioner to have timely requested a hearing in August, 2010, she was improperly subjected to garnishment of her wages.

6. Petitioner is entitled to a refund of all of the amounts that were improperly applied to her account through wage garnishment during the period from August, 2010 through March, 2011.

7. Petitioner was cautioned that a refund would increase the amount of her indebtedness subject to collection.
8. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
9. Petitioner's wages are subject to garnishment.
10. Respondent is entitled to administratively garnish the wages of the Petitioner, but not at the maximum amount.
11. Petitioner's income and expenses demonstrate that 10% of her wages would be subject to wage garnishment.
12. Petitioner may have three months from the date of this Decision and Order to attempt to negotiate with Treasury's agents a payment plan or settlement of the indebtedness.
13. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

Petitioner's account at Treasury is entitled to credit for costs that were not adequately documented by USDA-RD, in the amounts cited *infra.*, *supra.*

Petitioner is entitled to a refund for all amounts collected through wage garnishment during the period from August, 2010 through March, 2011.

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment in the amount of 10%, beginning no sooner than May 3, 2012.

Petitioner is advised that if she acquires the ability to negotiate a lump sum payment, she may be able to enter into a compromise settlement of the debt with the representatives of Treasury. Petitioner is further advised that such an agreement may lower anticipated fees for

collecting the debt. In addition, Petitioner may inquire about whether she may enter into an arrangement to make installment payments to Treasury in lieu of garnishment. 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 his address, phone numbers, or other means of contact.

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 February, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge