

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Patricia Nickerson,)	Docket No. 12-0076
)	
Petitioner)	Decision and Order

Appearances:

Patricia Nickerson, the Petitioner, representing herself (appearing *pro se*); and

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 on January 31, 2012. Patricia Nickerson, the Petitioner, also known as Patricia L. Nickerson, formerly known as Patricia Chapman (“Petitioner Nickerson”), 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 4, plus Narrative, Witness & Exhibit List, were filed on December 29, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner.

4. Petitioner Nickerson’s documents filed on January 31, 2012, are admitted into evidence, together with the testimony of Petitioner Nickerson, together with her Hearing Request and all other accompanying documents (filed November 18, 2011).

5. Petitioner Nickerson owes to USDA Rural Development **\$22,742.16** (as of December 27, 2011, *see esp.* RX 4, pp. 2, 3), in repayment of a United States Department of

Agriculture Farmers Home Administration loan made in 1993, for a home in Florida. The balance is now unsecured (“the debt”). [The loan balance has changed, because garnishment is ongoing; the balance has been reduced. As will be seen later in this Decision, the balance will increase when amounts taken from Petitioner Nickerson’s pay are returned to her.]

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$22,742.16**, would increase the balance by \$6,367.80, to \$29,109.96. *See esp.* RX 4, p. 3.

7. The amount Petitioner Nickerson borrowed in 1993 was \$41,600.00. RX 1. Petitioner Nickerson testified that her co-borrower passed away 8-10 months after purchase of the home. The loan was accelerated for foreclosure in 1995. By the time the home was sold on September 9, 1997, the debt had grown to \$51,087.75:

\$ 40,765.44	Principal Balance prior to sale
\$ 6,971.73	Interest Balance prior to sale
\$ 3,350.58	Fee Balance prior to sale (includes unpaid real estate taxes, unpaid insurance premiums, foreclosure costs)

\$ 51,087.75	Total Amount Due prior to sale
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RX 4, p. 1 and USDA Rural Development Narrative.

Proceeds from sale of the home reduced the Amount Due by \$28,400.00. RX 4, p. 1 Interest stopped accruing when the home was sold (September 9, 1997). Collections from Treasury applied to the debt as of November 2011 reduced the debt to **\$22,742.16** (excluding the potential remaining collection fees). *See* RX 4, and USDA Rural Development Narrative.

8. Petitioner Nickerson is paid every two weeks. Garnishment began with her pay for November 5-18, 2011, and has usually been \$80.00 or more every two weeks. When garnishment began, Petitioner Nickerson had not been in her current job for at least 12 months, but garnishment would have been permitted because she was not “involuntarily separated” from her previous job. [Petitioner Nickerson testified that previously, she had served as sole caregiver first to her mother; then served as sole caregiver to her husband who had cancer.] Petitioner Nickerson’s Hearing Request was **not late**, however, and for that reason garnishment should not have begun until her hearing was held and a decision reached. Petitioner Nickerson’s Hearing Request needed to be received by October 18, 2011. As confirmed by U.S. Postal Service records, Petitioner Nickerson had delivered her Hearing Request to the specified post office box in Birmingham, Alabama at 7:57 a.m. on

October 14, 2011. That suffices.

9. Petitioner Nickerson started her current job at Wal-Mart in July 2011. She works about 30 hours per week in the deli, making [REDACTED] per hour. Petitioner Nickerson has a 10th grade education. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is about [REDACTED] 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.] Petitioner Nickerson's Consumer Debtor Financial Statement shows that her living expenses are reasonable and exceed her disposable pay. Garnishment at 15% of Petitioner Nickerson's disposable pay has clearly caused Petitioner Nickerson financial hardship. To prevent further hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Nickerson's disposable pay. 31 C.F.R. § 285.11.

Discussion

10. I recommend that Petitioner Nickerson be granted **a financial hardship discharge** of the debt. Petitioner Nickerson, this will require **you** to telephone Treasury's collection agency after you receive this Decision. To be considered (the decision whether to grant you a financial hardship discharge will be made by Treasury's collection agency), you will be required to provide, timely, all financial documentation requested. The toll-free number for you to call is **1-888-826-3127**. Petitioner Nickerson, if you are not granted a financial hardship discharge (and it is difficult to qualify), 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. Petitioner Nickerson, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

12. Petitioner Nickerson owes the debt described in paragraphs 5, 6 and 7.

13. **Garnishment is not authorized**, to prevent financial hardship. 31 C.F.R. § 285.11.

14. All amounts already collected through garnishment of Petitioner Nickerson's pay prior to implementation of this Decision, **shall be returned** to Petitioner Nickerson. Petitioner Nickerson's Hearing Request was **not late**, and garnishment should not have begun until her hearing was held and a decision reached.

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

Order

16. Until the debt is repaid, Petitioner Nickerson 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).

17. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment. 31 C.F.R. § 285.11.

18. USDA Rural Development, and those collecting on its behalf, will be required to **return to Petitioner Nickerson** any amounts already collected through garnishment of Petitioner Nickerson's pay, prior to implementation of this Decision.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 6th day of April 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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