

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Timothy S. Caffery)	Docket No. 11-0368
)	
Petitioner)	Decision and Order

Appearances:

Clarence B. Meldrum, Jr., Esq., Council Bluffs, Iowa, for the Petitioner, Timothy S. Caffery

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

1. Timothy S. Caffery (“Petitioner Caffery”), represented by Clarence B. Meldrum, Jr., Esq., participated in the teleconference held on October 26, 2011; and the hearing by telephone held on April 10, 2012.
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”). Mary E. Kimball represented USDA Rural Development through the October 2011 portion of the proceeding. USDA Rural Development is now represented by Michelle Tanner, who participated on April 10, 2012.

Summary of the Facts Presented

3. Petitioner Caffery’s filings on November 29, 2011 and October 26, 2011 are admitted into evidence, together with the testimony of Petitioner Caffery. These filings include PX 2 (the typed “Consumer Debtor Financial Statement” signed by Petitioner Caffery on October 25, 2011); the Account of assets; the Current Income schedule; the Current Expenditures schedule; and the Scholastic Corporation pay stub. Also admitted into evidence is PX 1 (the letter from the Tallman-Scheel Agency), which was filed on October 24, 2011. Also admitted into evidence are Petitioner Caffery’s filings on September 27,

2011, and Petitioner Caffery's Hearing Request and accompanying documents, filed on August 29, 2011.

4. USDA Rural Development's Exhibits RX 1 through RX 9, plus Narrative, Witness & Exhibit List, were filed on September 19, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Caffery borrowed to buy a home in Nebraska, which he bought in 2004, and borrowed \$105,000.00 to pay for it. RX 1, RX 2.

6. Petitioner Caffery owes to USDA Rural Development a balance of **\$23,463.11** (as of September 9, 2011) in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service loan made in 2004 for the home in Nebraska, the balance of which is now unsecured ("the debt"). See USDA Rural Development Exhibits RX 1 through RX 9, especially RX 8 and RX 9, plus Narrative, Witness & Exhibit List.

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$23,463.11** would increase the current balance by \$6,569.67, to \$30,032.78. RX 9.

8. By the time the home was sold in a short sale on November 20, 2006, for \$94,000.00 (RX 5, RX 6), the debt had grown to \$112,236.69:

\$103,688.09	Principal Balance prior to sale
\$ 5,704.65	Interest Balance prior to sale
\$ 2,767.66	Fee Balance prior to sale (includes unpaid taxes and insurance, costs)
<u>\$ 76.29</u>	Late Charge
\$112,236.69	Total Amount Due prior to sale
=====	

RX 8 and USDA Rural Development Narrative.

9. Interest stopped accruing when sale proceeds were applied on the loan, in 2006. Proceeds from sale of the home reduced the Amount Due by \$84,630.58. Collections from Treasury applied to the debt after collection fees are subtracted have reduced the debt to **\$23,463.11** unpaid as of September 9, 2011 (excluding the potential remaining collection fees). RX 8.

10. **Offsets** in 2008 and 2011, mostly federal income tax refunds, reduced the balance by \$4,143.00 after the short sale. RX 8, p. 2. In addition to **offsets**, garnishment up to 15% of Petitioner Caffery's disposable pay can occur unless he cannot withstand garnishment in

that amount without hardship. 31 C.F.R. § 285.11. Petitioner Caffery's disposable pay is roughly [REDACTED] per month. (Disposable pay 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.) Although garnishment at 15% of Petitioner Caffery's disposable pay could yield roughly [REDACTED] per month in repayment of the debt, he cannot withstand garnishment in that amount without financial hardship. Petitioner Caffery has a 7 year-old child to support. Petitioner Caffery understated the expense of caring for his child on his Consumer Debtor Financial Statement. Petitioner Caffery's reasonable and necessary living expenses, including his child's requirements, consume his disposable pay. Petitioner Caffery's disposable pay (within the meaning of 31 C.F.R. § 285.11) does **not** currently support garnishment and **no** garnishment is authorized. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 6) must be limited to **0%** of Petitioner Caffery's disposable pay, through May 2017. Beginning in June 2017, garnishment **up to 15%** of Petitioner Caffery's disposable pay is authorized.

11. Petitioner Caffery is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

12. Garnishment of Petitioner Caffery's disposable pay is **not** authorized, through May 2017. *See* paragraph 10. Petitioner Caffery, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Caffery, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Caffery, 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 Caffery, 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 Caffery and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

14. Petitioner Caffery owes the debt described in paragraphs 5 through 9.

15. **No garnishment** of Petitioner Caffery's disposable pay is authorized, through May 2017. Beginning in June 2017, garnishment **up to 15%** of Petitioner Caffery's disposable pay is authorized. 31 C.F.R. § 285.11.

16. **No refund** to Petitioner Caffery of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

17. Repayment of the debt may also occur through **offset** of Petitioner Caffery's **income tax refunds** or other **Federal monies** payable to the order of Mr. Caffery.

Order

18. Until the debt is repaid, Petitioner Caffery shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

19. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment **through May 2017. Beginning in June 2017, garnishment up to 15%** of Petitioner Caffery's disposable pay is authorized. 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 11th day of April 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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