

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0259

In re: JUDITH UPTON-HALL,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the February 24, 2012 request by Judith Upton-Hall (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development (“USDA-RD”; “Respondent”), and if established, the propriety of imposing administrative wage garnishment. By Order issued on March 15, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on April 17, 2012.

On March 16, 2012, Respondent filed a Narrative, together with supporting documentation, identified as exhibits RX-1 through RX-5. On April 13, Respondent filed a supplemental exhibit identified as EX-6. On April 17, Attorney David C. Weigel entered his appearance on behalf of Petitioner. Three documents were filed for Petitioner: a Statement of Account (PX-1); a Consumer Debtor Financial Statement (PX-2); and Petitioner’s earning statement for the period ending March 25, 2012 (PX-3)

The hearing was held as scheduled, and the documents of both parties were admitted to the record. Testimony was given by Respondent’s representative, Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri. Petitioner’s counsel declined to offer any witnesses, and instead agreed to provide a copy of Petitioner’s wage statement, which was received and is hereby admitted to the record.

Petitioner argued that she had not been credited for all payments made against the account maintained by the U.S. Department of Treasury (“Treasury”). Petitioner also objected to the narrative submitted by USDA-RD as erroneous, thereby depriving her of due process. Although I agree that the narrative is misleading, I ruled that due process has been met because copies of documents supporting Petitioner’s indebtedness had been sent to her, as well as copies of relevant portions of her loan account. In addition, the evidence reveals that Petitioner was directly provided information about the balance due on these accounts in 2004, upon an inquiry by an attorney. RX-3; RX-4. I shall nevertheless exclude from my consideration the narrative filed by USDA-RD. The instant Decision and Order relies entirely upon Respondent’s exhibits and testimony and Petitioner’s exhibits and arguments.

I directed Respondent to provide to Petitioner’s counsel supporting documentation showing the amount of Petitioner’s tax offsets that was applied to penalties as opposed to the outstanding balance of her account at Treasury, to the extent that such documentation was lacking at RX-6.

Based upon my cursory review of Petitioner’s documents at the time of the hearing (the documents were not filed until ½ hour or so before the hearing was scheduled to commence), I believed that Petitioner’s disposable income would have limited the percentage of wage garnishment allowed. However, the evidence supports otherwise for the reasons set forth below.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

FINDINGS OF FACT

1. On June 2, 1995, Petitioner assumed a loan from USDA-RD in the amount of \$50,107.21 and also obtained a direct loan in the amount of \$36,000.00 to finance the purchase of property in St. Leonard, Maryland, as evidenced by a Promissory Note and Real Estate Mortgage. RX-1.

2. Petitioner's loans were maintained in two accounts, which were accelerated on November 30, 2000 due to default. RX-2
3. At a foreclosure sale held on April 11, 2002, the property was sold to a third party for \$84,895.72. RX-3; RX-6.
4. At the time of the sale, Petitioner owed \$74,048.09 on the assumed loan and \$41,614.72 on the direct loan, which amounts include accumulated fees and interest. RX-2; RX-3; RX-6.
5. After the proceeds from the sale were applied and fees were added to the accounts, Petitioner owed \$24,435.48 on the assumed loan and \$7,281.61 on the direct loan. RX-3; RX-6.
6. Petitioner's accounts were referred to Treasury for collection as required by law. RX-5.
7. Petitioner's income tax refunds for the years 2003, 2004, 2005 and 2008 were intercepted by Treasury and applied to offset the accounts. RX-6.
8. The smaller of Petitioner's accounts has been satisfied, leaving one account with a balance due of \$18,987.48.
9. Petitioner declined to testify, but provided a copy of a recent wage statement. PX-3.
10. Relying upon Treasury's Wage Garnishment Worksheet (SF-329C), and the reliable evidence of Petitioner's earnings and her certified Consumer Debtor Financial Statement, I have concluded that Petitioner's disposable bi-monthly income is [REDACTED]. PX-2; PX-3.
11. I reject the argument by Petitioner's counsel that wage garnishment is unnecessary because the debt has been and will be paid through tax refund offset, in part because the Debt Collection Act allows for the imposition of wage garnishment, and significantly because

¹Amounts for a health savings account, credit union, "def comp", and world gym are not considered exemptions from the calculation of disposable pay. See, SF 329 C; 31 D.F.R. § 285.11. However, my Decision and Order would not be changed even if I characterized these deductions as exemptions.

Petitioner has claimed eight (8) exemptions² against federal taxes, thereby maximizing her net pay and minimizing tax refunds. PX-3.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. One of the accounts at Treasury for collection has been satisfied through offset of Petitioner's tax refunds.
3. Petitioner's accounts have been fully credited to reflect offset of the debt by tax refunds.
4. Petitioner is indebted to USDA-RD in the amount of \$18,987.48, exclusive of potential Treasury fees for the remaining balance on one of the mortgage loans extended to her.
5. Petitioner was not prejudiced by erroneous information in USDA-RD's narrative, since Petitioner was provided accurate information about the balance due on these debts in 2004 at the request of her attorney, and because USDA-RD provided documentary evidence establishing the existence and validity of the debt and all credits applied to Petitioner's account.
6. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
7. Pursuant to the regulations pertaining to debt collection by wage garnishment, Petitioner's disposable income supports wage garnishment at the legal maximum percentage. See, 31 C.F.R. §§ 900-904; 31 U.S.C. §3717.
8. There is no evidence of hardship as defined by law or regulation.
9. The Respondent is entitled to administratively garnish the wages of the Petitioner at the regulatory and statutory maximum of 15%.

² Since Petitioner is single and claims no dependents (PX-2), this clearly is not an accurate reflection of her tax exemptions.

10. Wage garnishment shall be suspended for three months, or ninety (90) days, from the date of this Order, to allow Petitioner time to negotiate payment of the debt with Treasury's agents.

11. Wage garnishment may be imposed as of July 23, 2012.

12. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment 90 days from the date of this Decision and Order.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. 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 her 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 23rd day of April, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge