

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0569

In re: ERIN RAE McINTIRE,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the August 6, 2012 request of Erin Rae McIntire (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due, and if established, the propriety of imposing administrative wage garnishment. By Order issued on August 22, 2012, the parties were directed to provide information and documentation concerning the existence of the debt and the matter was set for a telephonic hearing to commence on September 25, 2012.

The Respondent filed a Narrative, together with supporting documentation¹ on August 21, 2012 and Petitioner filed a Consumer Debtor Financial Statement² on September 18, 2012. At the hearing, Petitioner represented herself and testified. Michelle Tanner represented USDA-RD and testified.

Before I closed the hearing, I offered to hold the record open for a brief period to allow Petitioner to augment her evidence with additional documents or testimony, but Petitioner declined the offer and requested a ruling based upon the extant record.

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

FINDINGS OF FACT

¹ References to Respondent’s exhibits herein shall be denoted as “RX-#”.

² This exhibit has been identified as, and shall be referred to herein as, “PX-1”.

1. On December 15, 2009, the Petitioner received a home mortgage loan in the amount of \$70,897.00 from USDA-RD to purchase residential real property located in Hillman, Michigan.

RX-1.

1. The Petitioner experienced a loss of income and requested a moratorium which was eventually granted on May 11, 2011, some months after it was requested. RX-2; Petitioner's credible testimony.

2. Petitioner believed that she could not afford her home loan, and she listed the home for sale. Petitioner's testimony; RX-3.

3. Petitioner's realty agent found a buyer for the property, and the amount realized from the sale and applied to her loan was \$63,899.50. RX-3.

4. Because the amount realized from the sale exceeded the amount that Petitioner owed on the loan, she needed approval from the USDA-RD for the "short sale". Testimony of both parties.

5. After application of the sale proceeds, the amount unpaid on the loan was \$9,064.89. RX-4.

6. Petitioner testified that she was not aware that she owed the outstanding loan balance to USDA-RD, since a representative from USDA-RD assured her that the sale would take care of her loan.

7. Despite this assertion, the record demonstrates that Petitioner had applied to compromise the remaining balance of the loan. RX-3; RX-5.

8. USDA-RD offered to compromise the debt, but Petitioner failed to sign the agreement; Petitioner testified that she could not afford the proposed \$98.00 per month payment for a period of 60 months.

9. Petitioner's account was adjusted to a balance of \$7,801.89, which USDA-RD entered as a debt due from Petitioner, and referred to the United States Department of Treasury ("Treasury") for collection on May 7, 2012. RX 6.

10. Petitioner has recently lost her job and her sole income is unemployment insurance benefits.

11. Petitioner supports her two minor children.

12. Because Petitioner had worked until approximately one month previous to the hearing, she is not entitled to a statutory finding of presumptive hardship.

13. Petitioner has no wage to garnish at this time.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA Rural Development in the amount of \$7,801.89 exclusive of potential Treasury fees for the mortgage loan extended to her.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. The Petitioner is currently not working, and wage garnishment cannot be effected.

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

ORDER

For the foregoing reasons, Petitioner shall **NOT** be subjected to administrative wage garnishment at this time.

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.

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 27th of September, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge