

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
David Maynez,) **Docket No. 12-0608**
)
Petitioner) **Decision and Order**

Appearances:

David Maynez, the Petitioner, representing himself (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 October 23, 2012. David Maynez, the Petitioner (“Petitioner Maynez”) participated, representing himself (appearing *pro se*). The record was held open for Petitioner Maynez to file a new Consumer Debtor Financial Statement.

2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated, represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Maynez’s filings on October 31, 2012, including his “Consumer Debtor Financial Statement” dated October 29, 2012, and copies of numerous recent bills documenting debt, especially for his wife’s health care including hospitalization, are admitted into evidence. Petitioner Maynez’s filings on October 24, 2012, including his 2 most recent pay stubs, are admitted into evidence. Petitioner Maynez’s filings on October 9, 2012, including his 3-page letter and his “Consumer Debtor Financial Statement” dated September 27, 2012, are admitted into evidence. Petitioner Maynez’s Hearing Request

dated August 6, 2012 with all accompanying documents, including his “Consumer Debtor Financial Statement” dated August 6, 2012, is also admitted into evidence, together with the testimony of Petitioner Maynez.

4. USDA Rural Development’s Exhibits RX 1 through RX 9, plus Narrative, Witness & Exhibit List, were filed on September 10, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Maynez bought a home in Texas in 2008, borrowing \$89,100.00 to pay for it. The loan was made by American Southwest Mortgage Corp., then sold to JP Morgan Chase Bank, N.A. (RX 2, p. 7), with the servicing lender being Chase Home Finance, LLC.

6. USDA Rural Development’s position is that Petitioner Maynez owes to USDA Rural Development **\$19,998.62** (as of September 7, 2012), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for the loan made in 2008 (“the debt”). See USDA Rural Development’s Exhibits RX 1 through RX 9, plus Narrative, Witness & Exhibit List.

7. Petitioner Maynez’s letter dated 10/08/2012 documents his efforts to pay Chase; and he testified that the Branch refused his payments after he got behind. Petitioner Maynez testified that Chase did not treat him fairly.

8. After careful review of all of the evidence, I agree with USDA Rural Development’s position. The *Guarantee* (RX 1) establishes an **independent** obligation of Petitioner Maynez, “I certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to recover on the Federal debt directly from me. The Agency’s right to collect is independent of the lender’s right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender.” RX 1, p. 2.

9. Pursuant to the *Guarantee*, on September 12, 2011, USDA Rural Development paid a loss claim of \$22,600.16 to the lender (Chase). RX 5, p. 11. The Due Date of the last payment made was November 1, 2009. RX 5, p. 4. The foreclosure sale date was October 5, 2010. RX 5, p. 5. RX 6 details the loss claim paid under the *Guarantee*, showing how the loss claim of \$22,600.16 was calculated.

10. At the foreclosure sale on October 5, 2010, the Bank (through a substitute Trustee) was the highest bidder (\$68,000.00). RX 2, p. 9. Thereafter, Chase sold the home for \$83,900.00 on May 13, 2011 RX 4, p. 2. Interest stopped accruing when the sale funds were applied. USDA Rural Development reimbursed the lender \$22,600.16 on September 12,

2011 (RX 5, p. 11), which is the amount USDA Rural Development seeks to recover from Petitioner Maynez under the *Guarantee*. RX 6.

\$ 87,489.45	Unpaid Principal Balance
\$ 6,419.09	Unpaid Interest Balance [11/01/2009 to 05/13/2011]
<u>\$ 229.88</u>	Protective Advances to Pay Taxes and Insurance
\$ 94,138.42	
+ <u>\$ 12,797.98</u>	Lender Expenses to Sell Property
<u>\$106,936.40</u>	Total Debt Charged to Petitioner Maynez
=====	

The debt was then \$106,936.40. RX 6.

- <u>\$ 83,900.00</u>	Funds Received from Sale of the home
<u>\$ 23,036.40</u>	Amount Due Before \$436.24 Recoveries/Credits/Reductions
=====	
- <u>\$ 436.24</u>	Recoveries/Credits/Reductions
<u>\$ 22,600.16</u>	
=====	

RX 6, RX 5, USDA Rural Development Narrative, and testimony.

11. Collections from Treasury (interception of a \$2,079.00 income tax refund, plus numerous garnishments) which have been applied to reduce the debt, have resulted in the balance of **\$19,998.62** as of September 7, 2012 (which excludes the potential remaining collection fees).

12. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$19,998.62**, would increase the balance by \$5,599.61, to \$25,598.23 (as of September 7, 2012). RX 9, p. 2.

13. Garnishment began because Petitioner Maynez's Hearing Request was LATE. RX 9, p. 1. The "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings," dated June 7, 2012, gave Petitioner Maynez until June 28, 2012 to request a hearing:

Request A Hearing. You may request a hearing from the Federal Agency by completing and mailing the enclosed Request for Hearing to the address listed below (Pioneer Credit Recovery, Inc., in Arcade, New York). If we receive your written request for a hearing on or before 06/28/2012, Treasury will not issue a wage garnishment order on behalf of the Federal Agency until your hearing is held and a decision is reached.

Petitioner Maynez's Hearing Request was not received until August 2012, so it was LATE.

14. Garnishment of Petitioner Maynez's disposable pay has caused Petitioner Maynez financial hardship. Petitioner Maynez and his wife have 4 children to support, in addition to themselves. [Mrs. Maynez is not responsible to pay the USDA Rural Development debt.] Petitioner Maynez has no health insurance. His wife was injured, requiring surgery and hospitalization. The bill for Emergency Room service to his wife on August 28, 2011 from University Medical Center was nearly \$2,000.00. The past due balance owed to Acute Surgical Care Specialist LLP at the end of 2011 was greater than \$4,500.00. The Del Sol Medical Center delinquent account alone is currently greater than \$10,000.00. Petitioner Maynez has an excellent job, but his income does not stretch far enough to cover all his responsibilities. Petitioner Maynez testified that he is barely making ends meet.

15. To prevent hardship, potential garnishment to repay the USDA Rural Development debt must be limited to **0%** of Petitioner Maynez's disposable pay through November 2014; then **up to 5%** of Petitioner Maynez's disposable pay beginning December 2014 through November 2016; then **up to 10%** of Petitioner Maynez's disposable pay beginning December 2016 through November 2018; then **up to 15%** of Petitioner Maynez's disposable pay thereafter. 31 C.F.R. § 285.11.

16. Petitioner Maynez, you may want to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

17. Petitioner Maynez, you may choose to call Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Maynez, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Maynez, you may choose to offer to pay through solely **offset of income tax refunds**, perhaps with a specified amount for a specified number of years. Petitioner Maynez, 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. You may wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

18. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Maynez and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
19. Petitioner Maynez owes the debt described in paragraphs 5 through 12.
20. Garnishment is authorized, but to prevent financial hardship shall be limited as follows: through November 2014 garnishment limited to **0%** of Petitioner Maynez's disposable pay; beginning December 2014 through November 2016 garnishment **up to 5%** of Petitioner Maynez's disposable pay; beginning December 2016 through November 2018 garnishment **up to 10%** of Petitioner Maynez's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Maynez's disposable pay. 31 C.F.R. § 285.11.
21. **No refund** to Petitioner Maynez of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.
22. Repayment of the debt may occur through *offset* of Petitioner Maynez's **income tax refunds** or other **Federal monies** payable to the order of Petitioner Maynez.

Order

23. Until the debt is repaid, Petitioner Maynez shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).
24. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment limited to **0%** of Petitioner Maynez's disposable pay through November 2014; then **up to 5%** of Petitioner Maynez's disposable pay beginning December 2014 through November 2016; then **up to 10%** of Petitioner Maynez's disposable pay beginning December 2016 through November 2018; then **up to 15%** of Petitioner Maynez's disposable pay thereafter. 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 14th day of November 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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