

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Otha Harris)	Docket No. 12-0529
)	
Petitioner)	Decision and Order

Appearances:

Otha Harris, 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 begun on August 30, 2012, resumed on September 17, and was completed on October 9, 2012. Otha Harris, also known as Otha Ree Harris and as Otha M. Harris and called “Marie” (“Petitioner Harris”), participated, representing herself (appeared *pro se*).

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

Summary of the Facts Presented

3. Petitioner Harris’s completed “Consumer Debtor Financial Statement” plus pay stubs (filed on October 18, 2012), are admitted into evidence, together with the testimony of Petitioner Harris, together with her Hearing Request (filed in mid-2012).

4. USDA Rural Development’s Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List (filed on August 6, 2012), are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Harris owed to USDA Rural Development **\$15,341.18** (as of July 28, 2012) in repayment of a USDA Farmers Home Administration loan borrowed in 1994 for a home in Texas, the balance of which is now unsecured (“the debt”). *See* USDA Rural Development Exhibits, esp. RX 1, RX 6.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$15,341.18**, would increase the current balance by \$4,295.53, to \$19,636.71. *See* USDA Rural Development Exhibits, esp. RX 6.

7. The amount Petitioner Harris borrowed from USDA Farmers Home Administration in 1994 was \$40,720.00. RX 1. The loan became delinquent and was reamortized. Reamortization made the loan current, by adding the delinquent amount to the principal balance. Reamortization did not change the total amount owed, which all became principal. Because of the reamortization, more principal was owed on August 9, 2000 than had been owed at the beginning: \$46,325.00 principal owed. RX 2.

8. Petitioner Harris testified that she left the home in 1999. [My baby daughter went to college and I left, too.] Petitioner Harris testified that the previous year, in 1998, Petitioner Harris’s son died, on Petitioner Harris’s birthday. The loss of her son was devastating, and the memories in the house were overwhelming. Petitioner Harris testified that she gave up.

9. USDA Rural Development’s “Notice of Acceleration” was dated August 9, 2000, and the foreclosure sale was held on April 3, 2001. RX 5. At the time of the foreclosure sale in 2001, the debt balance was \$51,042.47.

\$ 46,325.80	unpaid principal
\$ 3,464.86	unpaid interest
\$ 1,245.56	fees/costs (taxes, insurance, costs)
\$ <u>6.25</u>	interest on fees/costs

\$ 51,042.47

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RX 5 and Michelle Tanner’s testimony.

10. The highest bid at the foreclosure sale was \$36,000.00, bid by USDA. The \$36,000.00 was applied to reduce the debt (leaving a balance owed of \$15,042.47). Then additional costs and fees were billed and a refund applied (leaving a balance owed of **\$15,341.18**). RX 5 and Michelle Tanner’s testimony. Since 2001, no additional interest has accrued.

11. Petitioner Harris owes the balance of **\$15,341.18** (excluding potential collection fees) as of July 28, 2012, and USDA Rural Development may collect that amount from her. RX 6.

12. Michelle Tanner testified that from 2002 until 2011, U.S. Treasury had the wrong social security number for Petitioner Harris. This was discovered in 2011, when an income tax refund was intercepted to be applied to reduce the debt, but it was learned that the social security number belonged to a gentleman who does not owe the debt. RX 4, p. 2. The income tax refund was returned to the gentleman. RX 6, p. 1.

13. Petitioner Harris testified that she supports herself. When she can, Petitioner Harris sends some support to her daughter, who has 3 children. Petitioner Harris works hard; she is a Certified Nursing Assistant (CNA), and she works 2 jobs. She testified that she had a recent knee injury and has other health problems; she requires blood pressure medication and has high cholesterol. Petitioner Harris's disposable pay (within the meaning of 31 C.F.R. § 285.11) is as much as \$2,000.00 per month combined (both jobs). [Disposable income is gross pay minus income tax, Social Security, Medicare, and health insurance; and in certain situations minus other employee benefits contributions that are required to be withheld.]

14. Garnishment at 15% of Petitioner Harris's disposable pay could yield as much as \$300.00 per month to repay the USDA Rural Development debt, but garnishment in that amount now would cause Petitioner Harris financial hardship (within the meaning of 31 C.F.R. § 285.11). Petitioner Harris's Consumer Debtor Financial Statement (filed October 18, 2012) shows that her living expenses are reasonable, frugal in fact. It is important that she contribute to the well-being of her daughter and her daughter's 3 children.

15. To prevent financial hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **5%** of Petitioner Harris's disposable pay through November 2013; then **up to 10%** of Petitioner Harris's disposable pay thereafter. 31 C.F.R. § 285.11.

16. Petitioner Harris is responsible and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

17. Garnishment is authorized. *See* paragraphs 13 through 15. I encourage **Petitioner Harris and Treasury's collection agency to negotiate** the repayment of the debt. Petitioner Harris, 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 Harris, 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 Harris, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

19. Petitioner Harris owes the debt described in paragraphs 5 through 12.

20. **Garnishment is authorized**, as follows: through November 2013, garnishment **up to 5%** of Petitioner Harris's disposable pay; and thereafter, garnishment **up to 10%** of Petitioner Harris's disposable pay. 31 C.F.R. § 285.11.

21. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Harris's pay, to be returned to Petitioner Harris.

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

Order

23. Until the debt is repaid, Petitioner Harris 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).

24. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Harris's disposable pay through November 2013. Beginning December 2013 and thereafter, garnishment **up to 10%** of Petitioner Harris'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 21st day of November 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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