

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
 Janet Pacheco,) Docket No. **13-0006**
)
 Petitioner) **Decision and Order**

Appearances:

Janet Pacheco, 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 held on December 4, 2012. Janet Pacheco, the Petitioner (Petitioner Pacheco), participated, representing herself (appearing *pro se*).
2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated, represented by Michelle Tanner.
3. The record was held open through December 18, 2012.

Summary of the Facts Presented

4. Petitioner Pacheco’s documents (filed on December 17, 2012) are admitted into evidence, together with her Hearing Request (dated September 21, 2012), together with the testimony of Petitioner Pacheco.
5. USDA Rural Development’s Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List (filed on October 25, 2012), are admitted into evidence, together with the testimony of Michelle Tanner.

6. Petitioner Pacheco owes to USDA Rural Development **\$60,035.77** (as of October 22, 2012) in repayment of a USDA Farmers Home Administration loan borrowed in 1986 for a home in New Jersey, the balance of which is now unsecured (“the debt”). *See* USDA Rural Development Narrative and RX 1. The Narrative **corrects and updates** RX 7, p. 2, explaining that \$24,272.91 was incorrectly charged by USDA Rural Development before the account was sent to U.S. Treasury for collection.

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$60,035.77**, would increase the current balance by about \$16,810.02, to \$76,845.79. RX 7, p. 1, plus the Narrative.

8. The amount Petitioner Pacheco borrowed in 1986 from USDA Farmers Home Administration was \$50,000.00. RX 1. Reamortization in 1989 brought the past due amount current, by adding overdue amounts to the principal, resulting in a principal balance of \$48,316.11. RX 1, p. 3.

9. The loan was accelerated for foreclosure on June 28, 1999 due to “monetary default”. RX 2. The “next due” date was March 18, 1995; that is, the loan was 52 months past due when accelerated for foreclosure. RX 2, p. 4. The Notice of Acceleration (and of Intent to Foreclose) shows \$47,518.95 unpaid principal and \$16,461.74 unpaid interest (as of June 28, 1999). RX 2, p. 1. This did not include other costs, such as the unpaid insurance and unpaid real estate taxes that had to be advanced by USDA Rural Development.

10. Before a foreclosure sale was held, a buyer purchased the home by assuming the loan, based on an “As Is” appraised value of \$35,000.00 for the home. RX 3. The planned assumption was approved July 9, 1999. RX 3. The buyer (the one assuming the loan) was to borrow an additional \$40,000.00 to make repairs, with December 17, 1999 being the effective date of assumption. RX 3. [Petitioner Pacheco has no obligation regarding the buyer’s additional loan for making repairs.]

11. As of the date of the assumption (short sale) on December 17, 1999, the debt balance was \$97,048.63.

\$ 47,518.95	unpaid principal
\$ 18,589.02	unpaid interest
\$ 29,391.34	fees/costs (includes unpaid taxes, unpaid insurance, and other costs)
<u>\$ 1,549.32</u>	interest on fees/costs
\$ 97,048.63	
=====	

RX 6 and Michelle Tanner’s testimony.

Interest had accrued to December 17, 1999 (56 months past due). RX 6. Since the loan assumption (short sale) on December 17, 1999, no additional interest has accrued.

The \$35,000.00 from the buyer (the one assuming the loan) was applied to reduce the debt, leaving a balance owed of \$62,048.63.

	\$ 97,048.63
-	<u>\$ 35,000.00</u>
	\$ 62,048.63
	=====

The cost of 2 inspections and additional taxes were then added (\$749.14 added, leaving a balance owed of \$62,797.77). This \$62,797.77 figure is what should have been sent to U.S. Treasury for collection.

	\$ 62,048.63
+	<u>\$ 749.14</u>
	\$ 62,797.77
	=====

Michelle Tanner is thanked for her excellent work, finding and correcting the \$24,272.91 error. [U.S. Treasury corrected the balance by subtracting \$24,272.91 on October 27, 2012.]

12. U.S. Treasury intercepted an income tax refund of \$2,779.00 in February 2012; this *offset* of Petitioner Pacheco's income tax refund brought the balance to **\$60,035.77**. RX 7 and Michelle Tanner's testimony. Petitioner Pacheco still (as of October 22, 2012) owes the balance of **\$60,035.77** (excluding potential collection fees), and USDA Rural Development may collect that amount from her.

13. Petitioner Pacheco testified that she is unemployed, having had to stop working because of her chronic obstructive pulmonary disease (COPD). The plastic molding machines were intolerable. The letter from MedPlast dated September 21, 2012 and other documents filed December 17, 2012 prove that Petitioner Pacheco was involuntarily separated from her last job. When Petitioner Pacheco is successful in finding work that does not aggravate her condition, she will need some time to catch up financially before garnishment would be appropriate. Legally, she is allowed 12 months in her next job before her wages will be garnished.

14. Petitioner Pacheco's documents filed December 17, 2012 and her testimony persuade me that to prevent financial hardship, potential garnishment to repay "the debt"

(see paragraph 6) must be limited to **0%** of Petitioner Pacheco's disposable pay through July 2014; then, subject to the limitation not to garnish for her first 12 months in her next job, **up to 5%** of Petitioner Pacheco's disposable pay beginning August 2014 through July 2015; and **up to 10%** of Petitioner Pacheco's disposable pay thereafter. 31 C.F.R. § 285.11.

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

Discussion

16. Garnishment is **not** authorized until August 2014, and then only in limited amount. See paragraphs 13 and 14. I encourage **Petitioner Pacheco and Treasury's collection agency to negotiate** the repayment of the debt. Petitioner Pacheco, 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 Pacheco, 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 Pacheco, 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 Pacheco, you may wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

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

18. Petitioner Pacheco owes the debt described in paragraphs 6 through 12.

19. Garnishment is **not authorized through July 2014**. Subject to the limitation not to garnish for her first 12 months in her next job, beginning August 2014 through July 2015, garnishment **up to 5%** of Petitioner Pacheco's disposable pay, and thereafter, garnishment **up to 10%** of Petitioner Pacheco's disposable pay, is authorized. 31 C.F.R. § 285.11.

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

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

Order

22. Until the debt is repaid, Petitioner Pacheco 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).

23. USDA Rural Development, and those collecting on its behalf, are **not authorized** to proceed with garnishment of Petitioner Pacheco's disposable pay through July 2014. Subject to the limitation not to garnish for her first 12 months in her next job, beginning August 2014 through July 2015, garnishment **up to 5%** of Petitioner Pacheco's disposable pay, and garnishment **up to 10%** of Petitioner Pacheco's disposable pay thereafter, 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 27th day of December 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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