

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Lowanda White)	Docket No. 13-0071
)	
Petitioner)	Decision and Order

Appearances:

none for Lowanda White, the Petitioner, who represents herself (appears *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 as scheduled on January 22, 2013. Lowanda White, the Petitioner (Petitioner White), who represents herself (appears *pro se*), failed to participate in the hearing. [Petitioner White failed to participate by telephone. Petitioner White failed to respond to the Hearing Notice, which was filed and sent to her in December 2012, which directed her to file her contact information and to let us know the phone number we could use to reach her for the hearing. Petitioner White did not answer at the phone number we had for her and, even though we left a message with the phone number to return the call, she did not return the call.]

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 White’s Hearing Request (dated October 6, 2012) is admitted into evidence, with all enclosures, including her Consumer Debtor Financial Statement.

4. USDA Rural Development's Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, filed on November 20, 2012 (plus the Narrative, Witness & Exhibit List filed again on January 22, 2013 with Corrected Narrative), are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner White owes to USDA Rural Development **\$38,239.23** (as of November 8, 2012) (*see* RX 6, pp. 1-2) in repayment of a USDA Rural Housing Service loan borrowed in 1999 for a home in Texas, the balance of which is now unsecured ("the debt"). *See* RX 1.

6. Potential costs of collection (Treasury fees) in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$38,239.23**, would increase the current balance by about \$10,706.98, to \$48,946.21. RX 6, p. 2, plus the Narrative.

7. The amount Petitioner White borrowed in 1999 from USDA Rural Housing Service was \$68,675.00. RX 1.

8. The "next due" date was August 14, 2002; that is, the loan was 72 months past due, when, on August 4, 2008, the loan was accelerated for foreclosure. RX 2, p. 7. There had been Chapter 13 bankruptcy filings, 5 of them. During the bankruptcy proceedings, USDA Rural Development was not permitted to move forward.

9. The loan was accelerated for foreclosure on August 4, 2008 due to "MONETARY DEFAULT". RX 2. The Notice of Acceleration (and of Intent to Foreclose) shows \$58,078.72 unpaid principal and \$23,768.95 unpaid interest (as of August 4, 2008). RX 2, p. 1. This did not include other costs, such as unpaid insurance and unpaid real estate taxes that had to be advanced by USDA Rural Development.

10. A foreclosure sale was held on May 4, 2010. USDA was the highest bidder at the foreclosure sale; USDA bid \$69,264.00. RX 3, p. 1. In addition to the unpaid principal, the following were due:

\$ 28,346.18	unpaid interest
\$ 25,249.41	fees/costs (includes unpaid taxes, unpaid insurance, and other costs)
\$ 132.86	interest on fees/costs

RX 5 and Michelle Tanner's testimony.

11. Proceeds from the foreclosure sale (\$69,264.00) were applied to reduce the debt. RX 3, p. 1. Since the proceeds were applied to the balance, in 2010, no additional interest has accrued. No additional interest will accrue, which makes repaying the debt more manageable.

12. After the \$69,264.00 foreclosure sale proceeds were applied, the remaining debt was \$38,818.56. *See* the detail summarized at RX 5, which shows an *offset*, probably of Petitioner White's income tax refund, applied to principal on April 19, 2010.

13. An additional foreclosure bill (\$615.00), added to the balance after the foreclosure sale proceeds were applied, brought the balance to \$39,433.56. RX 5, p. 2. This balance, \$39,433.56, was referred to U.S. Treasury for collection on February 7, 2011. RX 6, p. 1. U.S. Treasury collections during 2012, itemized on RX 6, p. 1, brought the balance to **\$38,239.23** as of November 8, 2012. RX 6 and Michelle Tanner's testimony.

14. Petitioner White still (as of November 8, 2012) owes the balance of **\$38,239.23** (excluding potential collection fees), and USDA Rural Development may collect that amount from her.

15. Petitioner White wrote on her Hearing Request, "I am not able to pay my bills & take care of my children with this large amount coming out of my check." Petitioner White's Consumer Debtor Financial Statement dated October 6, 2012 submitted with her Hearing Request shows 4 children. The older children probably contribute toward paying the household expenses, but nevertheless I agree with Petitioner White, that to prevent financial hardship, garnishment to repay "the debt" (*see* paragraph 5) must be limited. 31 C.F.R. § 285.11.

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

Discussion

17. Petitioner White, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner White, 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 White, 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 White, 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 White and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

19. Petitioner White owes the debt described in paragraphs 5 through 14.

20. Garnishment **up to 5%** of Petitioner White's disposable pay is **authorized through July 2014**; and thereafter, garnishment **up to 10%** of Petitioner White's disposable pay is authorized. 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 White's pay, to be returned to Petitioner White.

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

Order

23. Until the debt is repaid, Petitioner White 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 White's disposable pay **through July 2014**; and thereafter, garnishment **up to 10%** of Petitioner White'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 25th day of January 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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