

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 08-0183
)
 Galen Stacy,)
)
 Petitioner)

Decision and Order

This matter is before me upon the request of the Petitioner, Galen Stacy, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against Petitioner. On September 17, 2008, I issued a Prehearing Order requiring the parties to exchange information concerning the nature of the debt and the ability of Petitioner to repay all or part of the debt, if established.

I conducted a telephone conference with the parties on November 14, 2008. During this conference, it became evident that Petitioner did not dispute the existence or the amount of the debt, but contended only that he was unable to pay the debt due to limited income and assets. Since Petitioner's written submission in response to my September 17 Order did not contain much in the way of current information, I directed him to submit by December 19, 2008, to the

Hearing Clerk and Respondent, several forms¹ concerning his financial status. I scheduled the case for a telephone hearing to be conducted on January 27, 2009.

At the hearing, Petitioner appeared on his own behalf, while Respondent was represented by Gene Elkin, Esq. While the Hearing Clerk had received a copy of the submission prepared by Petitioner on his financial status, Petitioner stated that the copy he sent to Respondent had been returned to him as undeliverable. I offered to continue the hearing to allow Respondent's counsel to review the submission, but my offer was declined.

After being sworn in, Petitioner testified that, although he graduated from college in the mid-1990's, he had never found a job in line with his university degree. He has been working as a security guard for \$9 an hour, and is not optimistic about finding a job in another field. Currently, with overtime, he grosses about \$1700 a month, and after taxes and health insurance deductions, he nets approximately \$1162 a month. He characterizes his monthly expenses at \$1193 per month, owns no real property, and lists his cash and household goods as being worth a total of \$620. He undisputedly owes approximately \$35,000 on the USDA RD loan, and also lists education, credit card, hospital and IRS debts totaling over \$100,000.

Mr. Elkin did not testify.

Findings of Fact

1. On November 30, 2001, Petitioner Galen C. Stacy obtained a USDA Rural Development home mortgage loan for property located at 502 Ohio, Oswego, KS 67536. Petitioner signed a promissory note for \$68,000. RX 1.

¹ Assets and liabilities statement; Income and expenses statement.

2. On June 25, 2004 Petitioner was sent a Notice of Default on the promissory note.
RX 3. On August 9, 2004, the account was reinstated and foreclosure efforts were ceased. On September 9, 2004, USDA received Petitioner's request for a moratorium on the loan; however, the property was eventually sold at foreclosure on February 2, 2007 for \$49,277.56.

3. After the foreclosure proceeds were applied to the debt owed at the time of the sale, the amount due USDA from Petitioner was \$34,955.14. RX 9.

4. Petitioner's current monthly net income is slightly exceeded by his current monthly expenses. In addition, Petitioner is substantially in arrears for student loans, hospital bills, credit card bills, and an IRS lien. His total indebtedness is well over \$100,000.

Conclusions of Law

1. Petitioner Galen C. Stacy is indebted to USDA's Rural Development program in the amount of \$34,955.14.

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

3. Based upon Petitioner's current income and necessary living expenses, and the large amount of debt owed by Petitioner, administrative wage garnishment of the wages of the Petitioner would cause him financial hardship.

4. Due to the finding of financial hardship, administrative wage garnishment is not authorized at this time.

5. Respondent may review the Petitioner's hardship at least annually and may reinstitute administrative wage garnishment proceedings if it receives information that the Petitioner's financial condition has materially changed.

Order

For the foregoing reasons, administrative wage garnishment of the wages of Petitioner Galen C. Stacy is not authorized at this time, without prejudice to reinstating proceedings should there be a material change in Petitioner's financial condition.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

MARC R. HILLSON
Chief Administrative Law Judge

February 4, 2009