

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No. 09-0078
)	
Danielle McInnis, aka)	
Danielle Nicholson)	
)	
Petitioner)	Dismissal of Petition

Pursuant to a Hearing Notice issued on July 6, 2009, I held a teleconference and a hearing by telephone, on July 22, 2009, at 10 AM Eastern Time. Petitioner and Respondents' representatives, Gene Elkin and Mary E. Kimball, participated. Petitioner had not complied with a Prehearing Order I had issued on April 3, 2009, that required her to file by June 5, 2009, lists of exhibits and witnesses, and a narrative describing why she cannot pay the alleged debt and indicating what portion of the alleged debt she is able to pay through garnishment. Petitioner was instructed by the July 6, 2009 Hearing Notice to file these materials together with financial information by July 15, 2009, but she did not do so. In the teleconference, Petitioner stated that she had not been able to contact Treasury Department officials to discuss settlement arrangements and denied receiving forms to provide financial information.

The parties were sworn. Respondent introduced records regularly maintained by USDA, Rural Development that were duly identified and authenticated that proved that:

- On September 30, 2003, petitioner signed an Assumption Agreement obligating herself to pay an USDA RD home mortgage loan for property

located at 43 Hartzog Magee Road, Prentiss, MS 3974 that had been made to her mother on April 25, 1990 (Exhibit RX-1).

- On June 25, 2006, the loan was reamortized with a principal balance of \$34,217.13 (Exhibit RX-2).
- On March 26, 2007, Petitioner was sent a Notice of Default when the loan balance was \$33,518.23 (Exhibit RX-3).
- On October 15, 2007, a foreclosure/short sale of the property was held when the total owed on the loan was \$38,087.14. The sale resulted in the receipt of \$16,000.00, and after these funds were applied to the debt, Petitioner owed \$22,087.14. There was an insurance refund, and USDA has received offset payments collected by the United States Treasury Department whereby the current amount due from Petitioner is \$20,582.16 (Exhibit RX-4).

USDA Rural Development has met its burden under 31 C.F.R. §285.11(f)(8) that governs administrative wage garnishment hearings, and has proved the existence and the amount of the debt owed by the Petitioner. Under that section Petitioner, as the debtor, was then required to show at the hearing by a preponderance of the evidence, that no debt exists, or the amount was incorrect, or the terms of a repayment schedule would cause her financial hardship, or that the collection of the debt may not be pursued due to operation of law (31 C.F.R. §285.11(f)(8)(ii)). She did not provide evidence sufficient to meet this burden of proof. However, USDA, RD has agreed to provide Petitioner and Treasury with current, correct contact information to enable them to work together to establish an appropriate settlement/payment plan.

Under these circumstances, the petition is hereby dismissed and the proceedings to garnish Petitioner's wages may be resumed at the applicable percentage rate of her disposable income allowed by Federal regulations.

Dated: July 29, 2009

Victor W. Palmer
Administrative Law Judge