

represented by Gene Elkin, Esq. and Mary Kimball, and Ms. Kimball testified on behalf of Respondent. Each party filed a short brief.

While there is an issue as to the validity of the debt, which I will discuss below, the amount of the debt owed to USDA was not seriously challenged. Rural Development guaranteed a loan for the purchase of a home in Boiling Springs, South Carolina on May 12, 2004. The purchase price of the home was \$122,955 and the amount financed was \$124,799. It was typical to finance a mortgage at 100% or more, including the payment of a guarantee fee and other closing costs, under rural Development's program, which is designed to help people who might not otherwise qualify to purchase a home. Rural Development only acts as a guarantor, and does not otherwise participate in what is basically a commercial loan, as long as guidelines are met. They knew that Petitioner was in debt for medical expenses, but, as Ms. Kimball testified, that is why Petitioner was able to take advantage of USDA's program.

The mortgage, originally issued by Franklin American Mortgage Company, was subsequently sold to Chase Home Mortgage. After Petitioner fell behind in her payments, Chase filed a foreclosure action, and the house was sold at foreclosure on June 29, 2007 for \$98,000. Petitioner lived in the home until she was ordered to vacate, and left the home in good condition. After USDA paid certain fees to Chase, and counting a payment Petitioner has made to USDA, the debt to USDA is \$49,803.36. Additional fees of over \$13,000 have been assessed by the U.S. Department of the Treasury, but these fees are not an issue here.

Petitioner contends that because the foreclosure order stated "Deficiency Waived" that there can be no personal lien against Petitioner pursuant to South Carolina law. However, I am persuaded by the cases cited by Respondent that such a waiver does not apply to the guarantor of

a federally-backed loan. Here, Chase was never in contact with USDA until after the foreclosure sale, and USDA never even knew that the mortgage was sold to Chase. Since Chase sought and received full reimbursement from USDA, Petitioner's argument that Chase was acting as USDA's agent is particularly non-compelling, since it is inconceivable that Chase could waive the right of USDA to collect on funds that Chase itself was collecting from USDA. South Carolina's law concerning deficiency waivers in foreclosures does not apply to a federal agency acting as a guarantor of a mortgage, and if it does apply, it would be superseded by the federal regulations. See, Boley v. Brown, 10 F. 3d 218 (C. A. 4, 1993), Boley v. Principi, 144 FRD 305 (E.D.N.C. 1992), Vail v. Derwinski, 946 F. 2d 589 (C.A. 8, 1991). Accordingly, I find that Petitioner does owe USDA \$49,803.36.

Petitioner also contends that she is unable to afford paying the debt back via wage garnishment. Petitioner works one full time and one part time job, taking home \$ [REDACTED] bi-weekly from her full time job and \$ [REDACTED] to \$ [REDACTED]0 monthly from her part time job. She has worked in a clerical capacity throughout her career of 33 years. She has suffered through a number of illnesses, currently including diabetes, hypertension, hypothyroidism, and arthritis, and has a mass in her neck which will require surgery. She presently pays approximately [REDACTED] monthly out-of-pocket for medications, and currently owes \$ [REDACTED] in unpaid medical expenses. She has had a number of surgeries in recent years and, although she was covered under a health plan, had to make substantial copayments. Her current monthly rent is [REDACTED] her monthly car payments are \$ [REDACTED] and she has car insurance and partial payments on her medical debts.

I find that Petitioner can pay, through wage garnishment, \$40 per pay period (\$80 per month). While I recognize that this constitutes some hardship, and that in reality the full debt

could never be repaid at this rate, Petitioner may request the Treasury to consider settling for a reduced consolidated amount following the issuance of this decision.

Findings of Fact

1. On May 12, 2004, Petitioner Mary Mills purchased a home in Boiling Springs, South Carolina. She obtained a home mortgage loan \$124,799, including guarantee fee and closing costs, which was guaranteed by the United States Department of Agriculture. Ex. RX-1.

2. Petitioner subsequently defaulted on the loan, and the home was sold at foreclosure on June 29, 2007, for \$98,000. USDA Rural Development had to pay the mortgage holder, Chase Bank, \$49,913.78, of which \$49,803.36 is still owed.

3. Petitioner is employed full time, and also has a part-time job, but has suffered through a number of medical misfortunes in recent years. She has a combined take home pay of under \$ [REDACTED], owes medical bills of over \$ [REDACTED] and has other regular expenses that would reduce the amount she can pay USDA.

4. I have determined that petitioner can pay, through the garnishment process, \$80 monthly (\$40 per bi-weekly pay period).

Conclusions of Law

1. Petitioner Mary Mills is indebted to the USDA, Rural Development, in the amount of \$49,803.36.

2. The fact that the foreclosure document issued by South Carolina state “Deficiency Waived” does not impact the right of the federal government to collect Petitioner’s debt, as a guarantor, via wage garnishment.

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

4. Respondent is entitled to administratively garnish the wages of Petitioner, but the amount of the garnishment is limited to \$80 per month (\$40 per pay period.).

Order

For the foregoing reasons, the wages of the Petitioner, Mary Mills, shall be subject to administrative wage garnishment at the rate of \$80 per month, or such lesser amount as specified in 31 C.F.R. § 285.11(i).

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

Done at Washington, D.C. this
22nd Day of December, 2009

MARC R. HILLSON
Chief Administrative Law Judge