

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No. 10-0186
)	
Sherrlyn Davis,)	
)	
Petitioner)	Decision and Order

Pursuant to a Hearing Notice, I held a hearing by telephone, on June 29, 2010, at 3:00 PM Eastern Time, in consideration of a Petition seeking to dispute Petitioner's obligation to pay a debt that Petitioner incurred under a single family mortgage loan that was given to her by Respondent, USDA, Rural Development, which, after a short sale and offsets from her income tax refunds, has not been fully repaid. Respondent has initiated administrative garnishment of Petitioner's wages for the nonpayment of the amount still owed.

Petitioner did not participate in the hearing. Petitioner was instructed by the Hearing Notice to file: 1. completed forms respecting her current employment, general financial information, assets and liabilities, and monthly income and expenses; 2. a narrative of events or reasons concerning the existence of the alleged debt and her ability to repay all or part of it; 3. supporting exhibits with a list of the exhibits and a list of witnesses who would testify in support of her petition.. She was further instructed to contact my secretary, Ms. Marilyn Kennedy, and give Ms. Kennedy a telephone number where Petitioner could be reached at the time of the scheduled hearing, nor did Petitioner telephone my secretary so as to participate in the scheduled hearing. Petitioner also failed to comply with the other instructions and filed nothing in support of her assertion that she

does not owe the full amount of the debt that is the subject of the wage garnishment proceeding.

Respondent participated in the hearing through its representative, Mary Kimball, Accountant for the New Initiatives Branch, USDA Rural Development who gave sworn testimony proving the existence of the debt owed to it by Petitioner and that a balance of \$1,496.23 is owed on the loan that is the subject of the wage garnishment proceedings. There are also potential fees of \$418.94 being assessed by Treasury for its collection efforts.

Under 31 C.F.R. § 285.11 (f)(2), a hearing on a Petition challenging wage garnishment may be, at the agency's option, either oral or written. An oral hearing may be conducted by telephone conference and is only required when the issues in dispute cannot be resolved by review of the documentary evidence 31 C.F.R. § 285.11 (f)(3).

An oral hearing was scheduled to hear and decide Petitioner's concerns. Petitioner never advised the Hearing Clerk, the Respondent, or this office how she could be personally contacted on the day of the scheduled hearing. Reasonable efforts were made to include her in the scheduled hearing, but were to no avail. Accordingly, the petition is being dismissed for Petitioner's failure to participate and present evidence or arguments to refute the documents provided by Respondent showing the existence of Petitioner's obligation to pay the debt still owed under the promissory note she signed with USDA-Rural Development.

USDA- Rural Development has proved the existence of the debt owed to it by Petitioner and the present balance of the loan. The Petitioner has not provided evidence refuting the existence of the loan or its present balance. Petitioner has also failed to

provide any evidence showing, within the meaning and intent of the provisions of 31 C.F.R. § 285.11, that collection of the loan balance by administrative wage garnishment would cause Petitioner a financial hardship, or that collection of the debt may not be pursued due to operation of law. Therefore, the Petition is dismissed and the proceedings to garnish Petitioner's wages may be resumed provided the amount of wages garnished does not exceed 15% of her disposable income.

Petitioner is advised, however, that if she telephones the private agency engaged by Treasury to pursue the debt's collection, she might be able to settle the debt at a lower amount with lower payments.

Dated: June 30, 2010


Victor W. Palmer
Administrative Law Judge