

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0006**
Linda S. Bennett,)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on December 8, 2010, and January 6, 2011. Ms. Linda S. Bennett, formerly known as Linda S. Cook (“Petitioner Bennett”), is represented by Edward F. Noyes, Esq.

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Mary E. Kimball. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
Bldg 105 E, FC-22, Post D-2
4300 Goodfellow Blvd
St Louis MO 63120-1703

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Summary of the Facts Presented

3. Petitioner Bennett owes to USDA Rural Development a balance of **\$25,002.98** (as of November 12, 2010) in repayment of two United States Department of Agriculture Farmers Home Administration loans, one *assumed* in 1991, and one *made* in 1991, for a home in Iowa. The balance is now unsecured (“the debt”). *See* USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed November 17, 2010, and January 6, 2011), which are admitted into evidence, together with the testimony of Mary Kimball.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$25,002.98** would increase the current balance by \$7,000.83, to \$32,003.81. *See* USDA Rural Development Exhibits, esp. RX-6.

5. The amount Petitioner Bennett borrowed in 1991 was \$48,046.07 (\$37,476.07 loan assumed, plus \$10,570.00 loan made). By the time of the foreclosure sale in 1999, that debt had grown to \$62,563.14:

\$ 48,302.35	Principal Balance prior to foreclosure sale
\$ 10,849.83	Interest Balance prior to foreclosure sale
<u>\$ 3,410.96</u>	Fee Balance prior to foreclosure sale
\$ 62,563.14	Total Amount Due prior to foreclosure sale
<u>=====</u>	
- <u>\$ 36,433.35</u>	Proceeds from foreclosure sale
\$ 26,129.79	Unpaid in 1999

RX 5 and USDA Rural Development Narrative.

The foreclosure sale in 1999 yielded \$36,433.35. The remaining balance of the debt was \$26,129.79 after those funds were applied. Another \$1,126.81 applied to the debt since then leaves **\$25,002.98** unpaid now (excluding the potential remaining collection fees). *See* RX 5 and USDA Rural Development Narrative.

6. Petitioner Bennett's Exhibit 1 (pay stub) and Exhibit 2 (expenses) filed January 6, 2011, and Petitioner Bennett's Hearing Request statements are admitted into evidence, together with the testimony of Petitioner Bennett.

7. I calculate Petitioner Bennett's disposable pay to be about \$2,000.00 per month. [I did allow the 401K deduction, in addition to all the other deductions. My calculations included both the 2-week pay period ending 11/28/10 (which yielded \$1,936.52 per month disposable pay); AND the year-to-date which includes 24 pay periods (which yielded \$2,090.70 per month disposable pay).] Petitioner's Exhibit 2 shows reasonable and necessary living expenses that exceed \$2,000.00 per month. The approximate amount that could be garnished in repayment of the USDA Rural Development debt is \$300.00 per month, which is 15% of \$2,000.00.

8. In evaluating the factors to be considered under 31 C.F.R. § 285.11, I find that Petitioner Bennett cannot withstand garnishment in that amount without hardship. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 3) must be

limited to zero per cent (0%) of Petitioner Bennett's disposable pay through August 2011; and no more than 5% of Petitioner Bennett's disposable pay thereafter. 31 C.F.R. § 285.11.

9. Petitioner Bennett is responsible and willing and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

10. Through August 2011, NO garnishment is authorized. Thereafter, garnishment up to 5% of Petitioner Bennett's disposable pay is authorized. *See* paragraphs 6, 7 and 8. I encourage **Petitioner Bennett and the collection agency** to **negotiate promptly** the repayment of the debt. Petitioner Bennett, 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 Bennett, 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.

Findings, Analysis and Conclusions

11. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Bennett and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

12. Petitioner Bennett owes the debt described in paragraphs 3, 4 and 5.

13. **Through August 2011, NO garnishment is authorized.** Thereafter, garnishment **up to 5%** of Petitioner Bennett's disposable pay is authorized. 31 C.F.R. § 285.11.

14. This Decision does not prevent repayment of the debt through **offset** of Petitioner Bennett's **income tax refunds** or other **Federal monies** payable to the order of Ms. Bennett.

Order

15. Until the debt is repaid, Petitioner Bennett 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).

16. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment **through August 2011**. Thereafter, USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, **up to 5%** of Petitioner Bennett's disposable pay. 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 10th day of February 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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