

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0086
Melissa Bradfield, now known as)	
Melissa VanMaele,)	
)	
Petitioner)	Decision and Order

1. The hearing was held, by telephone, on February 11, 2011. Ms. Melissa J. VanMaele, formerly known as Melissa J. Bradfield, the Petitioner (“Petitioner VanMaele”) participated, representing herself (appearing *pro se*).

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Ms. Mary 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 VanMaele owes to USDA Rural Development a balance of **\$52,442.43** (as of January 15, 2011), in repayment of a United States Department of Agriculture / Rural Housing Service **Guarantee** (see RX-2, esp. p. 2) for a loan made in 2005, the balance of which is now unsecured (“the debt”). Petitioner VanMaele borrowed to buy a home in Michigan. See USDA Rural Development Exhibits RX 1 through RX 8 which I admit into evidence, together with the Narrative, Witness & Exhibit List (filed February 4, 2011), and the testimony of Mary Kimball.

4. This *Guarantee* establishes an **independent** obligation of Petitioner VanMaele, “I certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to recover on the Federal debt directly from me. The Agency’s right to collect is independent of the lender’s right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender.” RX 2, p. 2.

5. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$52,442.43** would increase the current balance by \$14,683.88, to \$67,126.31. RX 8.

6. Petitioner VanMaele’s “Consumer Debtor Financial Statement” (filed February 11, 2011) is admitted into evidence, together with Petitioner VanMaele’s testimony. Petitioner VanMaele and her husband support five children with another child due in August 2011. Child support paid to Petitioner VanMaele is roughly equal to daycare expense. Petitioner VanMaele owes about \$2,850.00 in student loans. Petitioner VanMaele’s husband is **not** liable to repay “the debt” described in paragraph 3, and he has indebtedness of his own to repay. Petitioner VanMaele’s disposable pay (within the meaning of 31 C.F.R. § 285.11) does not support garnishment. Petitioner VanMaele should not be and should not have been garnished when her disposable pay is \$217.50 per week or less. Petitioner VanMaele’s gross pay is about \$10.00 per hour, about 15 hours per week, which is about \$150.00 per week. Petitioner VanMaele’s disposable pay **does not exceed** “an amount equivalent to thirty times the minimum (hourly) wage” for a week, currently \$217.50 per week (30 x \$7.25).¹ USDA Rural Development is **required to return** any amounts garnished in violation of 29 C.F.R. § 870.10.

7. Petitioner VanMaele is responsible and willing and able to negotiate the repayment of the debt with Treasury’s collection agency.

Discussion

8. **Through March 2013, NO garnishment is authorized.** I encourage **Petitioner VanMaele and the collection agency to negotiate promptly** the repayment of the debt. Petitioner VanMaele, 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

¹ The regulation at 31 C.F.R. § 285.11 includes the following restriction on garnishment: “The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay (for that week) exceeds an amount equivalent to thirty times the minimum (hourly) wage. See 29 CFR 870.10.”

VanMaele, you may ask that the debt be **apportioned separately** to you and your co-borrower, your former husband, Ryan M. Bradfield. You may choose to offer to compromise the debt for an amount you are able to pay, to settle the claim for less.

Findings, Analysis and Conclusions

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

10. Petitioner VanMaele owes the debt described in paragraphs 3, 4 and 5.

11. **Through March 2013, NO garnishment is authorized**, because garnishment would create financial hardship (and has created financial hardship). Thereafter, garnishment is authorized, the **lesser** of up to 15% of Petitioner VanMaele's disposable pay; **or** the amount by which her disposable pay per week **exceeds** 30 times the minimum hourly wage. 31 C.F.R. § 285.11, 29 C.F.R. § 870.10.

12. Petitioner VanMaele should not have been garnished when her disposable pay was \$217.50 per week or less. Petitioner VanMaele **shall be repaid any amounts already garnished** from her pay in violation of 29 C.F.R. § 870.10. [Garnishment is ongoing because Petitioner VanMaele's hearing request was late.]

13. Repayment of the debt may occur through *offset* of Petitioner VanMaele's **income tax refunds** or other **Federal monies** payable to the order of Ms. VanMaele.

Order

14. Until the debt is fully paid, Petitioner VanMaele 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).

15. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment **through March 2013**. Thereafter, USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, the **lesser** of up to 15% of Petitioner VanMaele's disposable pay; **or** the amount by which her disposable pay per week **exceeds** 30 times the minimum hourly wage. 31 C.F.R. § 285.11, 29 C.F.R. § 870.10.

16. Petitioner VanMaele **shall be repaid any amounts already garnished** from her pay in violation of 29 C.F.R. § 870.10.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 14th day of February 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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