

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0120**
Andres D. Valdez)
)
Petitioner) **Decision and Order**

1. Andres D. Valdez, the Petitioner (“Petitioner Valdez”), represents himself (appears *pro se*). The hearing by telephone was held on March 3, and on March 31, 2011.¹

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
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St Louis MO 63120-1703

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3. I encourage **Petitioner Valdez and the collection agency** to work together to **establish a repayment schedule** rather than immediately proceeding with garnishment, even though this Decision authorizes garnishment beginning May 2012. Petitioner Valdez, obviously, will have to make himself available to the collection agency if he wants to negotiate. See paragraph 10.

¹ See also AWG Docket No. 10-0326, in which a Dismissal of Petition for Oral Hearing was entered on September 22, 2010, after Petitioner was not available for the hearing that he requested, and he had submitted no exhibits.

Summary of the Facts Presented

4. USDA Rural Development's Exhibits, plus Narrative, Witness & Exhibit List, were filed on February 10, 2011, and are admitted into evidence, together with the testimony of Ms. Kimball.

5. Petitioner Valdez's completed "Consumer Debtor Financial Statement," plus his pay stub, plus his typed statement, were filed on March 29, 2011, and are admitted into evidence, together with the testimony of Petitioner Valdez. Petitioner Valdez maintains that he was told by USDA personnel that, after a short sale, he would owe nothing more on the house. [The foreclosure sale was June 12, 2009; USDA received \$74,000.00 from the sale,² which was applied to the \$108,958.07 owed.] Evidence of forgiveness or cancellation of the remaining debt would include a returned promissory note, a written release of liability, a 1099-C, none of which is before me.

6. Petitioner Valdez owes to USDA Rural Development **\$34,734.23** (as of February 7, 2011) in repayment of a Rural Housing Service loan made in 2000 for a home in New Mexico, the balance of which is now unsecured ("the debt").

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$34,734.23** would increase the current balance by \$9,725.58, to \$44,459.81. *See* USDA Rural Development Exhibits, esp. RX 6.

8. Petitioner Valdez's disposable income is about \$3,000.00 per month. [Disposable income as calculated here is gross pay minus Federal, Social Security, Medicare withholding.] Although Garnishment at 15% of Petitioner Valdez's disposable pay would yield roughly \$450.00 per month in repayment of the debt, he cannot withstand garnishment in that amount without hardship. Petitioner Valdez is supporting three minor children in addition to himself, and he is repaying motor vehicle and credit card loans and other indebtedness. He and his wife are going through a divorce. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 6) must be limited to **0%** of Petitioner Valdez' disposable pay through April 2012; then up to **7%** of Petitioner Valdez's disposable pay beginning May 2012 through April 2013; then up to **15%** of Petitioner Valdez's disposable pay thereafter. 31 C.F.R. § 285.11.

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

² Here, USDA was outbid at the foreclosure sale. USDA's bid would have been based on net recovery value minus 6 months of holding expenses.

Discussion

10. Through April 2012, no garnishment is authorized. Beginning May 2012 through April 2013, garnishment up to 7% of Petitioner Valdez's disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Valdez' disposable pay is authorized. *See* paragraphs 8 and 9. I encourage **Petitioner Valdez and the collection agency** to **negotiate promptly** the repayment of the debt. Petitioner Valdez, 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 Valdez, you may ask that the debt be **apportioned separately** to you and your co-borrower, Kristen S. Valdez. 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 Valdez and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

12. Petitioner Valdez owes the debt described in paragraphs 6 and 7.

13. **Garnishment is authorized**, as follows: through April 2012, **no** garnishment. Beginning May 2012 through April 2013, garnishment up to 7% of Petitioner Valdez's disposable pay; and thereafter, garnishment up to 15% of Petitioner Valdez's disposable pay. 31 C.F.R. § 285.11.

14. Repayment of the debt may also occur through **offset** of Petitioner Valdez's **income tax refunds** or other **Federal monies** payable to the order of Mr. Valdez.

Order

15. Until the debt is repaid, Petitioner Valdez shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his 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 April 2012. Beginning May 2012 through April 2013, garnishment up to 7% of Petitioner Valdez's disposable pay is authorized; and garnishment up to 15% of Petitioner Valdez's disposable pay thereafter. 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 31st day of March 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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