

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0080**
Tammy L. Atkins)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held as scheduled on May 3, 2011. Ms. Tammy L. Atkins (“Petitioner Atkins”), did not participate. (Petitioner Atkins did not participate by telephone: no one answered the phone number provided in her Hearing Request; she did not provide any other phone number. I left a recorded message asking for a return call and giving my phone number and did not receive a return call.)

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

mary.kimball@stl.usda.gov 314.457.5592 phone
314.457.4426 FAX

Summary of the Facts Presented

3. Petitioner Atkins owes to USDA Rural Development a balance of **\$7,234.45** (as of January 25, 2011) in repayment of two United States Department of Agriculture Farmers Home Administration loans, one *assumed* in 1995, and one *made* in 1995, for a home in Florida. The balance is now unsecured (“the debt”). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed April 12, 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 **\$7,234.45** would increase the current balance by \$2,151.85, to \$9,386.30. *See* USDA Rural Development Exhibits, esp. RX 6, pages 1 and 2.

5. The amount Petitioner Atkins borrowed in 1995 was \$49,499.03 (\$17,959.03 loan assumed, plus \$31,540.00 loan made). By the time of the short sale in 2001, that debt had grown to \$54,370.72:

\$ 48,110.63	Principal Balance prior to short sale
\$ 3,839.49	Interest Balance prior to short sale
<u>\$ 2,420.60</u>	Fees Balance (including interest on fees) prior to short sale
\$ 54,370.72	Total Amount Due prior to short sale
<u>=====</u>	
- \$ 47,341.18	Proceeds from short sale
\$ 7,029.54	Unpaid in 2001

RX 5 and USDA Rural Development Narrative.

The short sale in 2001 yielded \$47,341.18. The remaining balance of the debt was \$7,029.54 after those funds were applied. Then \$471.50 (pre foreclosure fee) was added; and \$107.73 (force place insurance refund) was subtracted. RX 5, page 1. Another \$158.86 applied to the debt since then leaves **\$7,234.45** unpaid now (excluding the potential remaining collection fees). *See* RX 5 and USDA Rural Development Narrative.

6. Evidence is required for me to determine whether Petitioner Atkins' disposable pay supports garnishment without creating hardship. 31 C.F.R. § 285.11. Petitioner Atkins failed to file a completed "Consumer Debtor Financial Statement" or anything in response to my Order dated March 31, 2011, so I cannot calculate Petitioner Atkins' reasonable and necessary living expenses. I do have Petitioner Atkins' Hearing Request with attachments. One paragraph states in part: "In closing I am raising my 4 children and survive with the economy the way it is. It takes all I make to do this; I can not afford anymore hardship."

7. With no testimony from Petitioner Atkins and no current pay stub, I cannot calculate with precision Petitioner Atkins' current disposable pay (after subtracting Federal income tax, social security, Medicare, health insurance, and any other "eligible" withholding from her gross pay). I do have data from garnishments in January 2011 (RX 5, page 2): each garnishment collects \$6.09 and yields \$4.76 net payment on "the debt" (see paragraph 3). Such garnishments do not appear to be cost effective. Further, such small yields do help me

to evaluate the factors to be considered under 31 C.F.R. § 285.11, such that I find that Petitioner Atkins probably cannot withstand garnishment without financial hardship.

8. To prevent financial hardship, potential garnishment to repay “the debt” (*see* paragraph 3) must be limited to zero per cent (0%) of Petitioner Atkins’ disposable pay. 31 C.F.R. § 285.11.

9. Petitioner Atkins is responsible and able to negotiate the repayment of the debt with Treasury’s collection agency.

Discussion

10. NO garnishment is authorized. *See* paragraphs 6, 7 and 8. I encourage **Petitioner Atkins and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Atkins, 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 Atkins, 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 Atkins and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

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

13. **NO garnishment is authorized.** 31 C.F.R. § 285.11. I am NOT, however, ordering any amounts already collected through garnishment of Petitioner Atkins’ pay prior to implementation of this Decision to be returned to Petitioner Atkins.

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

Order

15. Until the debt is repaid, Petitioner Atkins 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. 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 4th day of May 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776