

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0195
Lois Comeau,)	
)	
Petitioner)	Decision and Order

1. The hearing was held by telephone as scheduled, on June 23, 2011. Ms. Lois Comeau, also known as Lois G. Comeau, the Petitioner (“Petitioner Comeau”) participated, represented by Stephen Cosgrove, Esq.
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 Comeau owes to USDA Rural Development a balance of **\$33,039.30** (as of April 28, 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 2003, the balance of which is now unsecured (“the debt”). [This **\$33,039.30** balance will change (increase), because I order that wages already garnished be **returned** to Petitioner Comeau.] Petitioner Comeau borrowed to buy a home in Vermont. See USDA Rural Development Exhibits RX 1 through RX 10 which I admit into evidence, together with the Narrative, Witness & Exhibit List (filed May 9, 2011), and the testimony of Mary Kimball.

4. This *Guarantee* establishes an **independent** obligation of Petitioner Comeau, “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. I have studied carefully Petitioner Comeau’s Memorandum of Law with exhibits filed June 21, 2011. The document presents excellent argument. Nevertheless, after careful consideration of the evidence and the law, especially the law concerning administrative collections such as this, I find that an agency of the United States government collecting administratively has rules that differ from those of the various jurisdictions in which the loans were made, and that Petitioner Comeau owes the balance of **\$33,039.30** (excluding potential collection fees), as of April 28, 2011.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$33,039.30** would increase the current balance by \$9,251.00, to \$42,290.30. RX 10.

7. Petitioner Comeau’s testimony, together with Petitioner Comeau’s “Consumer Debtor Financial Statement” (filed June 21, 2011), and pay stub filed June 23, 2011, are admitted into evidence, together with Petitioner Comeau’s Hearing Request and accompanying documentation. Petitioner Comeau’s disposable pay (within the meaning of 31 C.F.R. § 285.11) does **not** support garnishment and **no** garnishment is authorized.

8. Petitioner Comeau works 35 hours per week (considered part-time) as a production clerk. Petitioner Comeau’s disposable income is about [REDACTED] per month. [Disposable income is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.] Although Garnishment at 15% of Petitioner Comeau’s disposable pay could yield roughly [REDACTED] per month in repayment of the debt, she cannot withstand garnishment in that amount without hardship. To prevent hardship, potential garnishment to repay “the debt” (*see* paragraph 3) must be limited to 0% of Petitioner Comeau’s disposable pay.

Discussion

9. **NO garnishment is authorized.** Petitioner Comeau, you may choose to contact the U.S. Treasury Department to **negotiate** the repayment of the debt. Whether Treasury would agree to apportion the debt between you and your co-borrower is perhaps worth exploring (even though your co-borrower may be discharging through bankruptcy his responsibility to

repay the debt). Whether Treasury would agree to a repayment schedule you can afford is perhaps worth exploring. Petitioner Comeau, negotiating with Treasury will require **you** to make the telephone call(s) after you receive this Decision; the toll-free number for you to call is **1-888-826-3127**. You are, of course, welcome to include an attorney or anyone else with you in the call.

Findings, Analysis and Conclusions

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

11. Petitioner Comeau owes the debt described in paragraphs 3, 4, 5 and 6.

12. **NO garnishment is authorized**, because garnishment would create financial hardship. 31 C.F.R. § 285.11. Further, Petitioner Comeau **shall be repaid the amounts already garnished** from her pay. [Garnishment is ongoing because Petitioner Comeau's hearing request was late; it was late because she did not receive the notice sent to a wrong address, and her employer's notification was the first she had that her pay was being garnished.]

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

Order

14. Until the debt is fully paid, Petitioner Comeau 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 (31 C.F.R. § 285.11) and **shall repay the amounts already garnished** from her pay.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, including **both** Petitioner Comeau **AND her attorney** Mr. Cosgrove.

Done at Washington, D.C.
this 24th day of June 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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