

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0155**
Steven Berrington)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was begun on May 3, 2011, and completed on May 4, 2011. Mr. Steven M. Berrington, the Petitioner (“Petitioner Berrington”), participated, representing himself (appeared *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 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 Berrington owes to USDA Rural Development a balance of **\$66,171.91** (as of March 2, 2011) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 2, esp. p. 2) for a loan made on August 9, 2007, by Valley Bank of Belgrade, a Branch of Flathead Bank of Big Fork, a Montana Corporation, for a home in Montana, the balance of which is now unsecured (“the debt”). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed March 21, 2011), which are admitted into evidence, together with the testimony of Mary Kimball.

4. This *Guarantee* establishes an **independent** obligation of Petitioner Berrington, “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 **\$66,171.91** would increase the current balance by \$18,528.13, to \$84,700.04. *See* USDA Rural Development Exhibits, esp. RX 9.

6. The amount Petitioner Berrington borrowed from Valley Bank of Belgrade, a Branch of Flathead Bank of Big Fork, was \$169,830.00 on August 9, 2007. RX 1. The due date of the last payment made was February 1, 2008. RX 3, p. 2. Foreclosure was initiated on November 13, 2008. The home sold on July 2, 2009 for \$132,000.00. RX 5, RX 6. Flathead Bank of Big Fork was the servicing lender, and Montana Board of Housing was the holding lender. USDA Rural Development paid Montana Board of Housing \$66,171.91 during 2009. RX 3, p. 7, RX 4, Narrative. Thus \$66,171.91, the amount USDA Rural Development paid, is the amount USDA Rural Development recovers from Petitioner Berrington under the *Guarantee*.

7. Although my Order dated March 31, 2011 required financial disclosure, and in addition I held the record open post-hearing (*see* my notice dated May 12, 2011), encouraging Petitioner Berrington to file a Consumer Debtor Financial Statement and pay stub(s), he filed nothing, so I have only his testimony. The evidence is insufficient for me to determine whether he can withstand garnishment at 15% of his disposable pay without financial hardship. 31 C.F.R. § 285.11.

8. At the times when we phoned Petitioner Berrington for the hearing, he reported that he was at a job site, and on another occasion he reported that he was dropping his boys off at school. Petitioner Berrington testified that he is a single parent with 3 children, ages 10, 13, and 16. He testified that he owes some back taxes and has some unpaid medical bills, including those from when his little one broke his collarbone when he fell off a slide, and dental bills from the orthodontist for braces. I suspect that Petitioner Berrington cannot withstand garnishment at 15% of his disposable pay without financial hardship, but I’ll have to leave it to Petitioner Berrington to negotiate the disposition of the debt with Treasury’s collection agency.

Discussion

9. I encourage **Petitioner Berrington and the collection agency** to **negotiate promptly** the disposition of the debt or perhaps the garnishment amount. Petitioner Berrington, this will require **you** to telephone the collection agency after you receive this Decision. Petitioner Berrington, you may request that you be permitted to compromise the debt for an amount you are able to pay, to settle the claim for less. The toll-free number for you to call is **1-888-826-3127**.

Findings, Analysis and Conclusions

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

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

12. Garnishment up to 15% of Petitioner Berrington's disposable pay is authorized. 31 C.F.R. § 285.11.

13. Petitioner Berrington is encouraged to disclose his financial circumstances by initiating contact through the toll-free number **1-888-826-3127**, for a determination of the amount of garnishment he can withstand without financial hardship.

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

Order

15. Until the debt is repaid, Petitioner Berrington 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 authorized to proceed with garnishment up to 15% of Petitioner Berrington'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 20th day of July 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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