

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
Barbara J. Green, n/k/a)	AWG Docket No. 11-0391
)	
Barbara J. Pitt,)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held as scheduled on October 5, 2011. Barbara J. Pitt, formerly known as Barbara J. Green, the Petitioner (“Petitioner Pitt”), 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 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. USDA Rural Development’s Exhibits, plus Narrative, Witness & Exhibit List (filed September 19, 2011), plus Mary Kimball’s testimony, are all admitted into evidence.

4. Petitioner Pitt's Hearing Request with all enclosures; plus Petitioner Pitt's testimony; plus Petitioner Pitt's Consumer Debtor Financial Statement dated September 30, 2011 and letter dated September 29, 2011, are all admitted into evidence.

5. Petitioner Pitt owes to USDA Rural Development a balance of **\$5,041.41** (as of September 13, 2011), in repayment of a \$49,500.00 United States Department of Agriculture Farmers Home Administration loan made in 1995 for a home in Tennessee, the balance of which is now unsecured ("the debt"). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List. See especially RX 5 for the loan balance, plus Mary Kimball's testimony that another \$57.09 from garnishment has been applied to the debt since RX 5 was prepared (\$73.08 was taken; \$15.99 was kept by Treasury for collection fees; and \$57.09 was applied to reduce the balance). [The loan balance will change, because garnishment is ongoing; the balance may have been reduced by the time I sign this Decision.]

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$5,041.41** would increase the current balance by \$1,411.59, to \$6,453.00. See RX 6.

7. About 4-1/2 years after the loan was made, the loan was reamortized, in 1999. See Narrative. The loan had become delinquent, and the reamortization made the loan current, by adding the amount delinquent to the principal balance. The principal amount due became \$51,705.94. The reamortization did not change the amount owed. See Narrative. Petitioner Pitt was not able to keep the loan current. A USDA Notice of Acceleration dated May 20, 2000 demanded payment in full of the entire debt.

8. The foreclosure sale was held on December 1, 2000. By the time of the foreclosure sale, \$4,569.01 in interest had accrued, and \$1,372.35 in fees. The \$57,413.11 due prior to the foreclosure sale included:

\$ 51,471.75	principal
4,569.01	accrued interest
<u>1,372.35</u>	"fee" balance
\$ 57,413.11	
=====	

RX 5.

9. The foreclosure sale on December 1, 2000 yielded \$46,000.00, which reduced the \$57,413.11 amount owed to \$11,413.11. Additional pre-foreclosure fees (\$795.35) increased the debt to \$12,208.46. No interest has accrued since the foreclosure sale on December 1, 2000. More than 10 years of Treasury *offsets*, minus the collection fees, have

paid down the debt by \$7,109.96 since the foreclosure sale, reducing the balance to \$5,098.50. RX 5, p. 2. Recent garnishments minus collection fees have paid down the debt further, by \$57.09 as of September 13, 2011, reducing the balance to **\$5,041.41**. See RX 6; and see paragraph 5 above.

10. Petitioner Pitt's evidence (described in paragraph 4) shows that Petitioner Pitt works as a senior care giver (home health care giver), so that people can continue to live at home. Petitioner Pitt earns \$8.25 per hour gross, and she works part-time, typically 30 hours per week. [**Petitioner Pitt should not be garnished when her disposable pay is \$217.50 per week or less.**]¹ USDA Rural Development does not garnish in violation of 29 C.F.R. § 870.10, where 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). [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.]

11. Petitioner Pitt is paid twice a month. Garnishment is ongoing, due to her Hearing Request having been late. Petitioner Pitt is 57 years of age, and she is diabetic, requiring insulin and syringes which she must pay for, and she has no health insurance coverage. It is unlikely that her earnings will increase, in part because her health does not permit her to work more hours. Petitioner Pitt's disposable pay is about \$950.00 to \$1,000.00 per month, and her reasonable and necessary expenses exceed \$1,000.00 per month. Any garnishment results in **financial hardship** to Petitioner Pitt and is NOT authorized. 31 C.F.R. § 285.11.

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

Discussion

13. Garnishment in any amount would result in **financial hardship** to Petitioner Pitt and is NOT authorized. 31 C.F.R. § 285.11. See paragraphs 10 and 11. I encourage **Petitioner Pitt and Treasury's collection agency to negotiate promptly** the repayment of the debt. Petitioner Pitt, 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 Pitt, 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.

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."

Findings, Analysis and Conclusions

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

15. Petitioner Pitt owes the debt described in paragraphs 5 through 9.

16. Garnishment in any amount would result in **financial hardship** to Petitioner Pitt and is NOT authorized. 31 C.F.R. § 285.11. I am NOT, however, ordering any amounts already collected through garnishment of Petitioner Pitt's pay prior to implementation of this Decision to be returned to Petitioner Pitt.

17. This Decision does not prevent repayment of the debt through *offset* of Petitioner Pitt's **income tax refunds** or other **Federal monies** payable to the order of Ms. Pitt.

Order

18. Until the debt is repaid, Petitioner Pitt 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).

19. USDA Rural Development, and those collecting on its behalf, are already garnishing Petitioner Pitt's pay, but garnishment in any amount results in **financial hardship** to Petitioner Pitt and is NOT authorized. 31 C.F.R. § 285.11.

20. USDA Rural Development, and those collecting on its behalf, will NOT be required to return to Petitioner Pitt any amounts already collected through garnishment of Petitioner Pitt's pay, prior to implementation of this Decision.

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

Done at Washington, D.C.
this 6th day of October 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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