

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0393**
Richard W. Adams,)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on October 12, 2011. Mr. Richard W. Adams, the Petitioner (“Petitioner Adams”), participated, representing himself (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
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Summary of the Facts Presented

3. USDA Rural Development’s Exhibits, plus Narrative, Witness & Exhibit List (filed September 21, 2011), are admitted into evidence, together with the testimony of Mary Kimball.

4. Petitioner Adams’ Consumer Debtor Financial Statement and letter (filed October 5, 2011) are admitted into evidence, together with the testimony of Petitioner Adams, together with his Hearing Request dated August 21, 2011, including attached letter.

5. Petitioner Adams owes to USDA Rural Development **\$10,375.83** (as of September 16, 2011) in repayment of a loan made in 1989 by the United States Department of Agriculture Farmers Home Administration (now USDA Rural Development, Rural Housing Service). Petitioner Adams borrowed to buy a home in Florida. The **\$10,375.83** balance is now unsecured (“the debt”). *See* USDA Rural Development Exhibits, esp. RX 7.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$10,375.83** would increase the current balance by \$2,905.23, to \$13,281.06. *See* USDA Rural Development Exhibits, esp. RX 8.

7. Petitioner Adams’ former wife Melissa Adams filed Chapter 7 bankruptcy on September 12, 2002, and the debt was discharged as to her on January 2, 2003. *See* Narrative. Even though Petitioner Adams’ former wife did not pay her share, this remains Petitioner Adams’ debt. USDA Rural Development is legally entitled to collect the entire amount from Petitioner Adams. Petitioner Adams works hard as a tow truck operator, and he intends to pay this debt, although paying more on the debt does not seem fair to him, especially when he considers the 10 years of payments made beginning in 1989. The payments were not kept current, though, so the balance became larger instead of smaller. Even with the interest subsidy¹ and even with the reamortization, the loan went into default, and as of the end of December 1999, USDA Rural Development sent notice of acceleration and intent to foreclose.

8. The loan Petitioner Adams borrowed in 1989 from USDA Farmers Home Administration was \$38,000.00. RX 1. By the time of the foreclosure sale in 2000, that debt had grown to \$45,269.49:

\$ 39,678.22	Principal Balance ² prior to foreclosure sale
\$ 4,399.39	Unpaid Interest up to Judgment (RX 5, p. 2)
\$ 196.21	Unpaid Interest from 08/23/2000 to 10/02/2000
\$ 641.00	Unpaid Interest from 10/02/2000 to foreclosure sale
<u>\$ 354.67</u>	Fee Balance prior to foreclosure sale
\$ 45,269.49	Total Amount Due prior to foreclosure sale
<u>=====</u>	

¹ Petitioner Adams was not required to pay all the interest that accrued; as shown by RX 5, p. 2, there was an interest subsidy of \$4,182.83. Although the Judgment shows recapture of the interest subsidy, USDA Rural Development did not recapture the interest subsidy, since the home was sold at a loss.

² In 1999, Petitioner Adams reamortized his account; the amounts delinquent on the account were added to principal, making his account current. This amortization did not change the amount owed, which was \$39,813.03, and was of benefit to Petitioner Adams. *See* Narrative.

- \$ 28,100.63 Proceeds³ from foreclosure sale

\$ 17,168.86 Unpaid in 2000
 =====

RX 7.

So the foreclosure sale left \$17,168.86 unpaid in 2000.

9. Since the foreclosure sale, no additional interest has accrued, and four *offsets* during 2002 through 2007, mostly Federal income tax refunds, have reduced the balance substantially, by another \$6,793.03 applied to the debt, leaving **\$10,375.83** unpaid now (excluding the potential remaining collection fees). See RX 7 and RX 8.

10. Petitioner Adams' current gross pay per week is [REDACTED] his current disposable pay per week is [REDACTED] [Disposable pay (within the meaning of 31 C.F.R. § 285.11) 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.] What is deducted from Petitioner Adams' weekly pay is Federal income tax [REDACTED] Social Security [REDACTED]; Medicare [REDACTED]; health insurance ([REDACTED] and Aflac insurance [REDACTED])

11. Petitioner Adams' monthly living expenses listed on the last page of his Consumer Debtor Financial Statement total [REDACTED], but that is incomplete, because it allowed nothing for motor vehicle insurance, which costs him about [REDACTED]0 per month, nothing for clothing, nothing for his out-of-pocket medical expenses, and nothing for the contributions he makes toward his 3 children, who are all adults but sometimes stay with him. Petitioner Adams requires medications to keep him from drying out; he is post-multiple surgeries in 2005 (oral, sinuses and nose surgeries) and uses a CPAP machine.

12. As I calculate it, Petitioner Adams makes between [REDACTED] and \$ [REDACTED] per month gross pay, yielding about [REDACTED] per month disposable pay. In addition to *offsets*, garnishment up to 15% of Petitioner Adams' disposable pay can occur unless he cannot withstand garnishment in that amount without hardship. 31 C.F.R. § 285.11. Although garnishment at 15% of Petitioner Adams' disposable pay could yield roughly [REDACTED] per month in repayment of the debt, he cannot withstand garnishment in that amount without financial hardship.

13. Petitioner Adams' current reasonable and necessary living expenses consume about [REDACTED] per month (this includes the [REDACTED]0 that he shows on his Consumer Debtor

³ The property sold for \$29,390.00 (RX 6), and \$28,100.63 is what USDA received from the sale.

Financial Statement, plus [REDACTED] for motor vehicle insurance, plus [REDACTED] for clothing, incidentals, and out-of-pocket medical expenses). The [REDACTED] per month is bare bones living expenses, including nothing for telephone, cable, or "other." That leaves about [REDACTED] per month of his disposable pay to pay indebtedness. Petitioner Adams testified that he just borrowed [REDACTED] from his girlfriend to pay a large credit card balance, and besides owing her, he still owes balances on multiple other credit cards. From his Consumer Debtor Financial Statement, it appears to me that he expects to pay more than [REDACTED] per month on credit card balances. In addition, he pays roughly [REDACTED] per month for his truck and [REDACTED] per month for his motorcycle. Petitioner Adams testified that he has only [REDACTED] left over at the end of each week. If Petitioner Adams is making all the payments on all the credit cards shown on his Consumer Debtor Financial Statement, he does not have anything left over; he is actually going deeper in the hole every month. His indebtedness is a crushing weight, even before taking into account the debt described in paragraphs 5 through 8.

14. The credit card balances and motor vehicle loans do not have priority over the debt described in paragraphs 5 through 8; nevertheless, to allow Petitioner Adams some "breathing room" to make arrangements to deal with his indebtedness, **no** garnishment is authorized through **October 2012**. To prevent hardship, potential garnishment to repay the debt described in paragraphs 5 through 8 must be limited to **0%** of Petitioner Adams' disposable pay through **October 2012**; then, beginning no sooner than November 2012, garnishment up to 15% of Petitioner Adams' disposable pay is authorized. 31 C.F.R. § 285.11.

15. Petitioner Adams, you may want to negotiate the disposition of the debt with Treasury's collection agency. *See* paragraph 16.

Discussion

16. NO garnishment is authorized through **October 2012** (*see* paragraph 13). Petitioner Adams, you may want to **negotiate** the disposition of the debt. Petitioner Adams, this will require **you** to telephone Treasury's collection agency. The toll-free number for you to call is **1-888-826-3127**. You may choose to request consideration of the unfair burden placed on you by the bankruptcy discharge obtained by your co-borrower. You may choose to offer to compromise the debt for an amount you are able to pay, to settle the claim for less. You may choose to offer to pay through solely **offset** of **income tax refunds**, perhaps with a specified amount for a specified number of years. You may wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

17. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Adams and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
18. Petitioner Adams owes the debt described in paragraphs 5 through 8.
19. **NO garnishment is authorized through October 2012.** Petitioner Adams cannot withstand garnishment in any amount without creating financial hardship. Beginning no sooner than November 2012, garnishment up to 15% of Petitioner Adams' disposable pay is authorized. 31 C.F.R. § 285.11.
20. This Decision does not prevent repayment of the debt through *offset* of Petitioner Adams' **income tax refunds** or other **Federal monies** payable to the order of Mr. Adams.

Order

21. Until the debt is repaid, Petitioner Adams 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).
22. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment through **October 2012**. Thereafter, garnishment up to 15% of Petitioner Adams' disposable pay is authorized. 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 13th day of October 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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