

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
Cherri Jones,) **Docket No. 12-0049**
)
Petitioner) **Decision and Order**

Appearances:

Cherri Jones, the Petitioner, representing herself (appearing *pro se*); and

Michelle Tanner, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, for the Respondent (USDA Rural Development).

1. The hearing by telephone was held as scheduled on January 19, 2012. Cherri Jones, the Petitioner, also known as Cherri N. Jones (“Petitioner Jones”), participated, representing herself (appears *pro se*).
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Michelle Tanner.

Summary of the Facts Presented

3. USDA Rural Development’s Exhibits RX 1 through RX 9, plus Narrative, Witness & Exhibit List, were filed on December 20, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner.
4. Petitioner Jones’ letter dated January 11, 2012, plus completed “Consumer Debtor Financial Statement,” were filed on January 20, 2012, and are admitted into evidence, together with the testimony of Petitioner Jones, together with her Hearing Request and all accompanying documents (filed November 4, 2011).

5. Petitioner Jones owes to USDA Rural Development **\$11,946.17** (as of December 17, 2011), in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for a loan made in 2006, the balance of which is now unsecured (“the debt”). Petitioner Jones borrowed, together with her then husband, William M. Jones, to buy a home in Alabama. [The loan balance has changed, because garnishment is ongoing; the balance has been reduced.]

6. The *Guarantee* (RX 3) establishes an **independent** obligation of Petitioner Jones, “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 1, p. 2.

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$11,946.17**, would increase the balance by \$3,583.85, to \$15,530.02. See USDA Rural Development Exhibits, esp. RX 9, p. 5.

8. Petitioner Jones asks that she and her co-borrower be required to pay equal amounts of the amount that was owed when they divorced in 2009, because they incurred this liability as a married couple. The amount was \$29,974.62. RX 8; RX 9; RX 6, p. 9. Petitioner Jones testified that they did not know about the debt at the time of their divorce and thus the debt was not addressed in their divorce decree. See also Petitioner Jones’ letter dated January 11, 2012. Petitioner Jones’ request makes good sense; perhaps she and her co-borrower will be able to agree between themselves to such a division of the debt.¹ If Petitioner Jones has any recourse against her co-borrower for reimbursement for amounts she has paid on the debt, she may want to pursue that. But USDA Rural Development, and those collecting on its behalf, are not limited to taking only half the debt repayment from each of them. Rather, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Jones. [And, likewise, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Jones’ co-borrower.]

9. Petitioner Jones has repaid substantial amounts of the debt through *offset* of her federal income tax refunds (RX 9, p. 2). Petitioner Jones works as an LPN. Her disposable

¹ The costs of collection (see paragraph 7) complicate the calculation. The amounts paid by Petitioner Jones were paid under the Treasury Offset Program when her federal income tax refunds were *offset* and the collection fees were very small in proportion to the amount applied on the debt. This is in contrast to garnishments, when the collection fees have been comparatively substantial in proportion to the amount applied on the debt.

pay (within the meaning of 31 C.F.R. § 285.11) is difficult to calculate without pay stubs. [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.] Petitioner Jones, a single mother with two children to support (a 10 year old and a 5 year old), testified that she is living paycheck to paycheck. Petitioner Jones' Consumer Debtor Financial Statement filed January 20, 2012 shows that her living expenses are reasonable, and that her living expenses probably exceed her disposable pay. In addition to those living expenses, Petitioner Jones has student loan payments of about \$400.00 per month (one student loan is \$21,545.00; the other student loan is \$14,000.00). Also in addition to those living expenses, she pays about \$128.00 per month on substantial credit card balances, not counting future purchases. Garnishment (at 15% of Petitioner Jones' disposable pay or in any amount), would clearly cause Petitioner Jones financial hardship.

10. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Jones' disposable pay through February 2015; then **up to 3%** of Petitioner Jones' disposable pay beginning March 2015 through February 2018; then **up to 5%** of Petitioner Jones' disposable pay thereafter. 31 C.F.R. § 285.11.

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

Discussion

12. Through February 2015, no garnishment is authorized. Beginning March 2015 through February 2018, garnishment up to 3% of Petitioner Jones' disposable pay is authorized; and thereafter, garnishment up to 5% of Petitioner Jones' disposable pay is authorized. *See* paragraphs 8, 9 and 10. I encourage **Petitioner Jones and the collection agency to negotiate** the repayment of the debt. Petitioner Jones, 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 Jones, 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. You may ask that **the debt be apportioned between you and your co-borrower**. Petitioner Jones, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Jones owes the debt described in paragraphs 5, 6 and 7.

15. As of February 18, 2011, Petitioner Jones had repaid significantly more than her co-borrower. When Petitioner Jones entered into the borrowing transaction with her co-borrower, her then husband Mr. William M. Jones, certain responsibilities were fixed, as to each of them, such that each of them owes the entire debt, and USDA Rural Development, and those collecting on its behalf, are not restricted to collecting equal amounts from each of them. [The debt is her co-borrower's and her joint-and-several obligation.] See paragraph 8.

16. **Garnishment is authorized**, as follows: through February 2015, **no** garnishment. Beginning March 2015 through February 2018, garnishment **up to 3%** of Petitioner Jones' disposable pay; and thereafter, garnishment **up to 5%** of Petitioner Jones' disposable pay. 31 C.F.R. § 285.11.

17. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Jones' pay, to be returned to Petitioner Jones.

18. Repayment of the debt may occur through *offset* of Petitioner Jones' **income tax refunds** or other **Federal monies** payable to the order of Mrs. Jones (whether or not garnishment is authorized).

Order

19. Until the debt is repaid, Petitioner Jones 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).

20. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through February 2015. Beginning March 2015 through February 2018, garnishment **up to 3%** of Petitioner Jones' disposable pay is authorized; and garnishment **up to 5%** of Petitioner Jones' disposable pay thereafter. 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 25th day of January 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Michelle Tanner, Appeals Coordinator
USDA / RD Centralized Servicing Center
Bldg 105 E, FC-244
4300 Goodfellow Blvd
St Louis MO 63120-1703
michelle.tanner@stl.usda.gov

314-457-5775 phone
314-457-4547 FAX

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