

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Sharrie J. Berowski,)	Docket No. 12-0094
)	
Petitioner)	Decision and Order

Appearances:

Sharrie J. Berowski, 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 February 2, 2012. Sharrie J. Berowski, formerly known as Sharrie J. Voigt, the Petitioner (“Petitioner Berowski”), 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. Petitioner Berowski’s Narrative, Witness & Exhibit List; plus Judgment of Dissolution of Marriage exhibit; plus completed “Consumer Debtor Financial Statement,” were filed on January 27, 2012, and are admitted into evidence, together with the testimony of Petitioner Berowski, together with her Hearing Request and all accompanying documents (filed December 7, 2011).

4. USDA Rural Development’s Exhibits RX 1 through RX 4, plus Narrative, Witness & Exhibit List, were filed on January 10, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner. Also admitted into evidence is USDA Rural Development’s exhibit filed post-hearing on February 2, 2012: Exhibit RX 5, Subsidy Repayment Agreement; plus Exhibit List.

5. Petitioner Berowski owes to USDA Rural Development a balance of **\$23,596.69** (as of January 5, 2012) in repayment of a United States Department of Agriculture Farmers Home Administration loan assumed in 1992 (RX 5), for a home in Illinois. The balance is now unsecured (“the debt”). See USDA Rural Development Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit Lists (filed January 10, 2012, and February 2, 2012).

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$23,596.69** would increase the current balance by \$6,607.07, to \$30,203.76. See USDA Rural Development Exhibits, esp. RX 4, p. 4.

7. The amount Petitioner Berowski borrowed in 1992 was \$45,200.00. RX 5. The loan was accelerated for foreclosure May 17, 1997. Before a foreclosure sale was held, a short sale was approved and completed on March 10, 1999. RX 3, p. 1, and USDA Rural Development Narrative.

\$ 43,922.53	Unpaid Principal Balance prior to short sale
\$ 6,969.24	Unpaid Interest Balance prior to short sale
\$ 3,422.74	Recoverable costs and fees (fees includes unpaid real estate taxes, unpaid insurance premiums), interest on fees, and other items, pre-sale and post-sale)

\$ 54,314.51	
- <u>21,953.38</u>	Received from the short sale
\$ 32,361.13	Total Amount Due, after short sale proceeds applied
=====	

RX 4, p. 1, and USDA Rural Development Narrative.

Collections from Treasury (largely from Petitioner Berowski, through *offset*) leave **\$23,596.69** unpaid as of January 5, 2012 (excluding the potential remaining collection fees). See RX 4, pp. 1, 2, 3 and 4, and USDA Rural Development Narrative.

8. Petitioner Berowski asks that she and her co-borrower, her former husband, be required to pay equal amounts of the amount that was owed when they divorced in 2007, because their Distribution of Property/Appportionment of Debts divided the debt 50-50 (one-half to each). This is shown in Petitioner Berowski’s Hearing Request documents and also her filing on January 27, 2012. Petitioner Berowski’s request is reasonable and sensible; perhaps she and her co-borrower will be able to agree between themselves to such a division of the debt. If Petitioner Berowski 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 Berowski. [And, likewise, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Berowski's co-borrower.]

9. Petitioner Berowski has repaid substantial amounts of the debt through *offset* of her federal income tax refunds and her stimulus money (RX 4, p. 2). Petitioner Berowski is a single mother with a teenage son to support. She testified that their living expenses are "bare bones," "no t.v." Petitioner Berowski's Consumer Debtor Financial Statement filed January 27, 2012 shows that her living expenses are reasonable. She has higher expenses during the winter, because her asthma medications plus doctor visits increase (as much as ██████ per month for medication, and ██████ to ██████ per month for doctor appointments). Petitioner Berowski works as a WIA Youth Case Manager. She is paid every two weeks. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly ██████ per month from her Case Manager job. [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 Berowski also works a second job with the school district, part-time. She receives child support. Nevertheless, currently, garnishment at 15% of Petitioner Berowski's disposable pay would likely cause Petitioner Berowski financial hardship.

10. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Berowski's disposable pay through December 2012; then **up to 7%** of Petitioner Berowski's disposable pay beginning January 2013 through December 2014; then **up to 15%** of Petitioner Berowski's disposable pay thereafter. 31 C.F.R. § 285.11.

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

Discussion

12. Through December 2012, no garnishment is authorized. Beginning January 2013 through December 2014, garnishment up to 7% of Petitioner Berowski's disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Berowski's disposable pay is authorized. *See* paragraphs 8, 9 and 10. I encourage **Petitioner Berowski and the collection agency** to **negotiate** the repayment of the debt. Petitioner Berowski, 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 Berowski, 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 Berowski, 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 Berowski and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

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

15. When Petitioner Berowski entered into the borrowing transaction with her co-borrower, Mr. Scott A. Berowski, 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 December 2012, **no** garnishment. Beginning January 2013 through December 2014, garnishment **up to 7%** of Petitioner Berowski's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Berowski's disposable pay. 31 C.F.R. § 285.11.

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

Order

18. Until the debt is repaid, Petitioner Berowski 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 **not** authorized to proceed with garnishment through December 2012. Beginning January 2013 through December 2014, garnishment **up to 7%** of Petitioner Berowski's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Berowski's 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 17th day of February 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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