

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Joy Kent,)	Docket No. 12-0409
)	
n/k/a Joy Owens,)	
)	
Petitioner)	Decision and Order

Appearances:

none, by Joy Kent, now known as Joy Owens, the Petitioner; and

Giovanna Leopardi, 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 July 10, 2012. Joy Kent, now known as Joy Owens (Petitioner Kent) did not participate. (Petitioner Kent did not participate by telephone: there was no telephone number for Ms. Kent provided in her Hearing Request; and in response to my instructions in the Hearing Notice [signed April 25, 2012 and filed May 9, 2012], Petitioner Kent provided no telephone number where she could be reached for the hearing by telephone.)

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Giovanna Leopardi.

Summary of the Facts Presented

3. Petitioner Kent owes to USDA Rural Development a balance of **\$62,015.88** (as of May 11, 2012, *see* RX 8), 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 Kent borrowed, with

the co-borrower, her then-husband, to buy a home in Virginia. *See* USDA Rural Development Exhibits RX 1 through RX 8, together with the Narrative, Witness & Exhibit List (filed May 22, 2012); and the testimony of Giovanna Leopardi, all of which I admit into evidence.

4. The *Guarantee* (RX 1) establishes an **independent** obligation of Petitioner Kent, “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.

5. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$62,015.88** would increase the current balance by \$17,364.45, to \$79,380.33 (as of May 11, 2012). RX 8, p. 4.

6. Petitioner Kent and her co-borrower, her former husband, are jointly and severally liable to pay the debt. Benjamin Kent is held responsible to pay the debt just as Petitioner Kent is, as shown by RX 8. Petitioner Kent stated on her Hearing Request “my exhusband is equally responsible.” Yes, but USDA Rural Development may legally collect more than half, even all, from either one of them. Once Petitioner Kent entered into the borrowing transaction with her co-borrower, certain responsibilities were fixed. Petitioner Kent still owes the balance of **\$62,015.88** (excluding potential collection fees), as of May 11, 2012, and so does her co-borrower, her former husband. Even though Petitioner Kent may have legal recourse against her co-borrower for monies collected from her on the debt, that does not prevent USDA Rural Development from collecting from her, pursuant to the *Guarantee*. RX 1.

7. Petitioner Kent failed to file a Consumer Debtor Financial Statement, or anything, in response to my instructions in the Hearing Notice [signed April 25, 2012 and filed May 9, 2012]. Thus I cannot calculate Petitioner Kent’s current disposable pay. (Disposable pay 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.)

8. There is no evidence before me to use to consider the factors to be considered under 31 C.F.R. § 285.11. In other words, I cannot tell whether garnishment to repay “the debt” (*see* paragraph 3) in the amount of 15% of Petitioner Kent’s disposable pay creates a financial hardship.

9. Petitioner Kent may choose to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

10. I encourage **Petitioner Kent and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Kent, 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. You may want to request apportionment of debt between you and the co-borrower.** 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. Petitioner Kent, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

12. Petitioner Kent owes the debt described in paragraphs 3 through 6.

13. **Garnishment up to 15% of Petitioner Kent's disposable pay** is authorized. There is no evidence that financial hardship will be created by garnishment. 31 C.F.R. § 285.11.

14. **No refund** to Petitioner Kent of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

Order

16. Until the debt is repaid, Petitioner Kent 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).

17. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner Kent'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 18th day of July 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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