

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
 Barbara A. Smith,) Docket No. **12-0499**
)
 Petitioner) **Decision and Order**

Appearances:

Barbara A. Smith, 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, scheduled for August 23, 2012, is CANCELED, because the issue of whether Barbara A. Smith, the Petitioner (“Petitioner Smith”) can withstand garnishment without it causing financial hardship, can be decided based on the written record.
2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), is represented by Michelle Tanner.

Summary of the Facts Presented

3. Chief Judge Peter M. Davenport’s Decision and Order filed November 18, 2010 determined that Petitioner Smith is indebted to USDA Rural Development. USDA Rural Development’s Exhibit RX 2. USDA Rural Development’s Exhibits RX 1 through RX 3, plus Narrative, Witness & Exhibit List (filed on July 24, 2012), are admitted into evidence. Michelle Tanner’s testimony will not be required.

4. Petitioner Smith's completed "Consumer Debtor Financial Statement" plus two recent pay stubs (filed on August 10, 2012), are admitted into evidence, together with Petitioner Smith's Hearing Request (dated June 3, 2012), which included a completed "Consumer Debtor Financial Statement" plus her 2011 W-2 and a recent pay stub. Petitioner Smith's testimony will not be required.
5. Petitioner Smith owes to USDA Rural Development **\$12,638.78** (as of July 21, 2012) in repayment of a USDA Farmers Home Administration loan borrowed in 1994 for a home in Florida, the balance of which is now unsecured ("the debt"). *See* USDA Rural Development Exhibits.
6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$12,638.78** would increase the balance by \$3,538.86, to \$16,177.64. *See* USDA Rural Development Exhibits, esp. RX 3, p. 4.
7. Petitioner Smith's co-borrower, her former husband, Kenneth Smith, is making considerable progress repaying the debt. Petitioner Smith's Consumer Debtor Financial Statement indicates that her former husband is disabled; the monthly *offsets* (*see* RX 3, pp. 5-7) may be coming from his disability payments. [He may want to file his own Hearing Request.] Petitioner Smith's income tax refund repaid a considerable amount in February 2011, but she owes the IRS for 2011 taxes.
8. Petitioner Smith's disposable pay (within the meaning of 31 C.F.R. § 285.11) has historically been a little more than \$1,000.00 every 2 weeks, roughly \$2,100.00 - \$2,200.00 per month. [Disposable income is gross pay minus income tax, Social Security, Medicare, and health insurance and, here, disability insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.] Lately, though, Petitioner Smith has not been getting full-time hours. ("My work has been slow so I have been doing two days a week 24 hr. When I can I do overtime.") Based on the two most recent pay stubs, Petitioner Smith's disposable pay has been roughly \$685.00 every 2 weeks, roughly \$1,500.00 per month. Petitioner Smith is trying to help family members cope, including those with medical challenges and the expenses that result. At this time, Petitioner Smith cannot afford to be garnished without it causing Petitioner Smith and the family who depend on her financial hardship (within the meaning of 31 C.F.R. § 285.11).
9. To prevent financial hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Smith's disposable pay through September 2014; then, beginning October 2014, **up to 5%** of Petitioner Smith's disposable pay. 31 C.F.R. § 285.11.
10. Petitioner Smith is responsible and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

11. Garnishment is authorized in limited amount (5% of disposable pay) beginning October 2014. *See* paragraphs 8, 9. I encourage **Petitioner Smith and Treasury's collection agency** to **negotiate** the repayment of the debt. Petitioner Smith, 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 Smith, 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 Smith, you may want to request apportionment of debt between you and the co-borrower. Petitioner Smith, 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. Petitioner Smith, you may wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

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

13. **Garnishment is not authorized through September 2014**; thereafter, garnishment is authorized, **up to 5%** of Petitioner Smith's disposable pay. 31 C.F.R. § 285.11.

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

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

Order

16. Until the debt is repaid, Petitioner Smith 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 not authorized to proceed with garnishment of Petitioner Smith's disposable pay through September 2014. Beginning October 2014, garnishment **up to 5%** of Petitioner Smith's 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 August 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