

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Dorothy Johnson,)	Docket No. 12-0461
)	
Petitioner)	Decision and Order

Appearances:

Dorothy Johnson, the Petitioner, representing herself (appearing *pro se*); 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 on August 15, 2012. Dorothy Johnson, also known as Dorothy A. Johnson and as Dorothy M. Johnson (Petitioner Johnson) participated, accompanied by Mssrs. Michael Large and Gus Smith of South Carolina Legal Services.
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. Admitted into evidence are Petitioner Johnson’s testimony and her August 13, 2012 filing, including Petitioner’s Exhibits PX 1 through PX 6; her July 20, 2012 filing; and her Hearing Request dated May 23, 2012.
4. Admitted into evidence are Giovanna Leopardi’s testimony and USDA Rural Development’s June 25, 2012 filing, including Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List.

5. Petitioner Johnson owes to USDA Rural Development **\$26,566.58** (as of June 22, 2012, *see esp.* RX 5, pp. 1, 2), in repayment of a United States Department of Agriculture / Farmers Home Administration loan made in 1992, for a home in Virginia. The balance is now unsecured (“the debt”).

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$26,566.58**, would increase the balance by \$7,438.64 to \$34,005.22. *See esp.* RX 5, p. 2.

7. The amount Petitioner Johnson borrowed in 1992 was \$64,000.00. RX 1. Foreclosure was begun in 1997. The foreclosure sale took place on August 19, 1998. USDA Rural Development received the sale proceeds (\$44,056.25) on November 13, 1998. By then, the USDA Rural Development debt had grown to \$74,090.22 (RX 4):

\$ 62,969.92	Principal
\$ 9,175.61	Interest
\$ 1,942.53	Recoverable Costs
\$ <u>2.16</u>	Interest on Recoverable Costs
\$ 74,090.22	Amount Due when sale funds were applied on the loan
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RX 4, RX 3, USDA Rural Development Narrative, and Giovanna Leopardi’s testimony.

The sale proceeds of \$44,056.25 were applied to the Amount Due. Interest stopped accruing either on the day of the foreclosure sale (August 19, 1998) OR when the sale proceeds were applied on the loan (November 13, 1998, RX 3, p. 3). [Based on the Notice of Acceleration which identifies a daily interest rate of \$14.2329 after June 10, 1997 (RX 2, p. 1), I believe interest stopped accruing on the day of the foreclosure sale.] An additional foreclosure fee of \$425.00 was added to the balance, resulting in \$30,458.97 being due (the deficiency) from Petitioner Johnson.

8. USDA Rural Development received no debt settlement package from Petitioner Johnson. (If the forms had been submitted, there would have been an offer of settlement from her with extensive financial documentation to prove what she could afford to pay). By letter dated December 30, 2000, Petitioner Johnson was notified that USDA Rural Development was referring the debt to Treasury for collection. Collections from Treasury (through *offsets* of Petitioner Johnson’s income tax refunds that were intercepted and applied to the debt, beginning in 2001, and her stimulus money (*see* RX 5, p. 1)), reduced the debt from \$30,458.97 to **\$26,566.58** unpaid as of June 22, 2012 (excluding the potential remaining collection fees). *See* RX 5, RX 3 and USDA Rural Development Narrative.

9. Petitioner Johnson still owes the balance of **\$26,566.58** (as of June 22, 2012, excluding the potential remaining collection fees), and USDA Rural Development may collect that amount from her. The issue is whether she should be garnished. Petitioner Johnson's Consumer Debtor Financial Statements, earnings records, Affidavit, and all her extraordinarily thorough documentation, permit me to calculate her 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.) Further, I see Petitioner Johnson's entire financial circumstances, including her earnings history for more than four decades. Petitioner Johnson should **not** be garnished, ever.

10. Garnishment to repay "the debt" (*see* paragraph 5) in the amount of 15% of Petitioner Johnson's disposable pay, or in any amount, would create financial hardship. Petitioner Johnson has gotten nearly \$4,000.00 of the debt repaid through *offsets* of her income tax refunds and a stimulus payment; it is clear that the loss of those funds has caused her financial hardship.

Discussion

11. Petitioner Johnson, if you wish to contact Treasury's collection agency to negotiate a compromise of the debt, you may telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Johnson, 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 Johnson, 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 Johnson, you may wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

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

13. Petitioner Johnson owes the debt described in paragraphs 5 through 9.

14. **Garnishment is not authorized.** Petitioner Johnson's filings and testimony persuade me that garnishment in any amount will cause financial hardship; I conclude that it is highly probable that this will remain true throughout the future. 31 C.F.R. § 285.11.

15. **No refund** to Petitioner Johnson of monies already collected or collected prior to implementation of this Decision through *offset* is appropriate, and no refund of *offsets* is

authorized. If, however, any amounts have been collected through garnishment of Petitioner Johnson's pay prior to implementation of this Decision, those amounts shall be returned to Petitioner Johnson.

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

Order

17. Until the debt is repaid, Petitioner Johnson 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).

18. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment in any amount, ever. 31 C.F.R. § 285.11. USDA Rural Development, and those collecting on its behalf, will be required to **return to Petitioner Johnson** any amounts already collected through garnishment of Petitioner Johnson's pay, if any there be, prior to implementation of this Decision.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties. **The Hearing Clerk shall use the mailing address for Petitioner Johnson that she provided on her Contact Information Sheet (p. 2 of her August 13, 2012 filing).**

Done at Washington, D.C.
this 16th day of August 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Giovanna Leopardi, Appeals Coordinator
USDA / RD Centralized Servicing Center
Bldg 105 E, FC-244
4300 Goodfellow Blvd
St Louis MO 63120-1703

giovanna.leopardi@stl.usda.gov

314-457-5767 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