

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Jamie Barela,)	Docket No. 12-0487
)	
Petitioner)	Decision and Order

Appearances:

none, by Jamie Barela, 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 on August 21, 2012, having been postponed from August 15, 2012 at the request of Jamie Barela, also known as Jamie A. Barela, the Petitioner (Petitioner Barela). Petitioner Barela did not participate. (Petitioner Barela did not participate by telephone: there was no answer at the telephone number for Ms. Barela provided in her Hearing Request; and in response to my instructions in the Hearing Notice [filed June 28, 2012], Petitioner Barela 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 Barela owes to USDA Rural Development a balance of **\$95,246.05** (as of July 11, 2012, *see* RX 10, p. 2), 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 2008, the balance of which is now unsecured (“the debt”). Petitioner Barela borrowed, with the co-borrower, Brian G. Sanders, to buy a home in Oregon. *See* USDA

Rural Development Exhibits RX 1 through RX 11, together with the Narrative, Witness & Exhibit List (filed July 18, 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 Barela, “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 **\$95,246.05** would increase the current balance by \$26,668.89, to \$121,914.94 (as of July 11, 2012). RX 10, p. 2.

6. Petitioner Barela and her co-borrower, Brian G. Sanders, are jointly and severally liable to pay the debt. Brian G. Sanders is held responsible to pay the debt just as Petitioner Barela is, as shown by RX 10. USDA Rural Development may legally collect more than half, even all, from either one of them. Once Petitioner Barela entered into the borrowing transaction with her co-borrower, certain responsibilities were fixed. Petitioner Barela still owes the balance of **\$95,246.05** (excluding potential collection fees), as of July 11, 2012, and so does her co-borrower. Even if Petitioner Barela has 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 Barela failed to file a Consumer Debtor Financial Statement, or anything, in response to my instructions in the Hearing Notice [filed June 28, 2012]. Thus I cannot calculate Petitioner Barela’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 Barela’s disposable pay creates a financial hardship. Petitioner Barela’s Hearing Request dated June 6, 2012 does indicate that she is a single mother of two children and will declare bankruptcy. I encourage Petitioner Barela to obtain advice from a bankruptcy law expert; that may be a good option. Petitioner Barela filed no financial information for me to consider: no Consumer Debtor Financial Statement, no pay stubs, nothing.

9. Petitioner Barela may choose, before filing bankruptcy, to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

10. **Petitioner Barela, if you choose to negotiate with Treasury's collection agency**, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Barela, 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. 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 want to request apportionment of the debt between you and the co-borrower**. Petitioner Barela, you may wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

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

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

13. **Garnishment up to 15% of Petitioner Barela'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 Barela 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 Barela's **income tax refunds** or other **Federal monies** payable to the order of Ms. Barela.

Order

16. Until the debt is repaid, Petitioner Barela 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 Barela'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 21st day of August 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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