

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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|----------------|---|---------------------------|
| In re: |) | |
| |) | [AWG] |
| Brenda Gorder, |) | Docket No. 12-0606 |
| |) | |
| Petitioner |) | Decision and Order |

Appearances:

Brenda Gorder, 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 on October 23, 2012 (in two segments, each lasting about an hour). Brenda Gorder, the Petitioner, full name Brenda Lee Gorder (“Petitioner Gorder”), participated, representing herself (appears *pro se*).
2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated, represented by Michelle Tanner.

Summary of the Facts Presented

3. USDA Rural Development’s Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List (filed on September 13, 2012), are admitted into evidence, together with the testimony of Michelle Tanner.
4. Petitioner Gorder’s completed “Consumer Debtor Financial Statement” (submitted with her Hearing Request) and her Hearing Request (dated August 14, 2012) are admitted into evidence, together with her letter to the Hearing Clerk filed October 22, 2012, together with the testimony of Petitioner Gorder.

5. Petitioner Gorder owes to USDA Rural Development **\$44,012.23** (as of September 11, 2012), 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 2007, the balance of which is now unsecured (“the debt”). Petitioner Gorder borrowed to buy a home in Missouri. The lender was First Midwest Bank of Dexter, which sold to U.S. Bank N.A. (servicing lender U.S. Bank Home Mortgage). The **Guarantee** remained in effect. Frequently herein I refer to the lender as U.S. Bank.

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

7. Petitioner Gorder borrowed \$128,750.00 on July 27, 2007 to buy the home. RX 2. Petitioner Gorder testified that she had moved in after a divorce, and within the second year she and her daughter had medical problems. The Due Date of Last Payment Made was September 1, 2008. RX 7, p. 4. Foreclosure was initiated on December 10, 2009. RX 7, p. 5. At the foreclosure sale on January 6, 2010, the lender U.S. Bank bid \$102,000.00 and acquired the home, which became REO (Real Estate Owned). RX 4, esp. p. 2. The lender U.S. Bank then sold the home for \$102,650.00 on March 23, 2010. RX 6, p. 8.

8. Petitioner Gorder owes the interest that accrued beginning September 1, 2008 through March 23, 2010 (about a year-and-a-half), plus the foreclosure costs, the sales costs afterward, and the costs of maintaining the home until it was sold March 23, 2010. The costs are summarized on RX 8. Petitioner Gorder testified that she is very responsible - - has been working since the 8th grade - - but had not been well for months. She testified that for months, her non-functioning gall bladder was not detected in spite of tests and specialists she saw. She had become toxic. Finally, following gall bladder surgery, she began to recover. She testified that, as a single mom, her own medical expenses, plus expenses for removal of her daughter’s wisdom teeth, are a large part of her failure to stay current on her mortgage.

9. USDA Rural Development reimbursed the lender \$47,429.23 on June 24, 2010. RX 7, p. 9. RX 7 details the loss claim paid under the **Guarantee**, showing how the debt became \$47,429.23. USDA Rural Development’s payment of \$47,429.23 is the amount USDA Rural Development seeks to recover from Petitioner Gorder under the **Guarantee**. RX 8. Petitioner Gorder has made substantial progress repaying the debt, as shown on RX 11, p. 1. Her income tax refund of more than \$3,000.00 was intercepted and applied to

reduce the debt (*offset*), and garnishment had begun at the job she used to have. As of September 11, 2012, Petitioner Gorder's debt had been reduced to **\$44,012.23**, RX 11.

10. Interest stopped accruing on March 23, 2010 when the home was sold, which makes repayment of the debt more manageable. The costs of collection are considerably lower when income tax refunds are *offset*, because the flat fee (now \$17.00) is usually lower than the percentage (up to 28%) that is applied to collection costs from garnishments and voluntary payments, before the balance is applied to reduce the debt.

11. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$44,012.23**, would increase the balance by \$12,323.42, to \$56,335.65. RX 11, p. 2.

12. Petitioner Gorder is no longer employed. She moved out-of-state about a month ago to be near her 77-year old mother to be able to provide assistance if necessary. Petitioner Gorder will be working again, but she will require some time to catch up on obligations from moving and needs that are not being met while she has no income.

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

14. Petitioner Gorder is responsible and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

15. Through November 2013, no garnishment is authorized. Beginning December 2013 through November 2014, garnishment up to 7% of Petitioner Gorder's disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Gorder's disposable pay is authorized. *See* paragraphs 12 and 13. I encourage **Petitioner Gorder and the collection agency to negotiate** the repayment of the debt. Petitioner Gorder, 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 Gorder, 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 Gorder, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

16. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Gorder and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
17. Petitioner Gorder owes the debt described in paragraphs 5 through 11.
18. **Garnishment is authorized**, as follows: through November 2013, **no** garnishment. Beginning December 2013 through November 2014, garnishment **up to 7%** of Petitioner Gorder's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Gorder's disposable pay. 31 C.F.R. § 285.11.
19. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Gorder's pay, to be returned to Petitioner Gorder.
20. Repayment of the debt may occur through *offset* of Petitioner Gorder's **income tax refunds** or other **Federal monies** payable to the order of Ms. Gorder (whether or not garnishment is authorized).

Order

21. Until the debt is repaid, Petitioner Gorder 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).
22. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through November 2013. Beginning December 2013 through November 2014, garnishment **up to 7%** of Petitioner Gorder's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Gorder'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. **Petitioner Gorder's address has CHANGED**. The Hearing Clerk shall serve Petitioner Gorder at the address Petitioner Gorder provided during the hearing, which I will send to the Hearing Clerk by email.

Done at Washington, D.C.
this 26th day of October 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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