

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0126

In re: DORIS P. MILLER,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the December 14, 2012 request of Doris P. Miller (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due, and if established, the propriety of imposing administrative wage garnishment. By Order issued on January 15, 2013, the parties were directed to provide information and documentation concerning the existence of the debt and the matter was set for a telephonic hearing to commence on January 31, 2013.

On January 8, 2013, Respondent filed a Narrative, together with supporting documentation¹ identified as RX-1 through RX-7. That evidence was admitted to the record. Petitioner did not file exhibits.

At the hearing, Petitioner represented herself and testified. Michelle Tanner represented USDA-RD and testified. I advised Petitioner that she could supplement the record with information regarding past bankruptcy filings, and could request reconsideration of my Decision in this matter if she locates documents.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered:

FINDINGS OF FACT

¹ References to Respondent’s exhibits herein shall be denoted as “RX-#”.

1. On October 9, 1986, the Petitioner² received a home mortgage loan in the amount of \$38,500.00 from USDA-RD to purchase residential real property located in Calhoun City, Mississippi. RX-1.

1. The Petitioner experienced a loss of income and requested a moratorium which increased the amount originally due on the note. RX-2.

2. The loan fell into default and was accelerated for foreclosure on March 16, 2011. RX-3.

3. A third party purchased the home for \$20,000.00 at foreclosure sale held on November 29, 2011. RX-3.

4. At the time of the sale, the amount due on the loan was \$50,103.70, which reflects principal, interest, recoverable costs and late charges. RX-3.

5. After application of the sale proceeds, the amount unpaid on the loan was \$30,045.18. RX-4.

6. A foreclosure fee of \$434.16 was added to the account on may 29, 2012. RX-3.

7. USDA-RD offered to compromise the debt, but Petitioner could not comply with the offer and did not sign a compromise agreement.

8. Petitioner testified that she had filed at least one, and perhaps two bankruptcy petitions, but was not certain whether indebtedness relating to her home mortgage loan was discharged under the Bankruptcy Code.

9. Petitioner's account records suggest that the bankruptcy was dismissed without full discharge.

10. USDA-RD entered the outstanding balance on the account as a debt due from Petitioner, and referred to the United States Department of Treasury ("Treasury") for collection pursuant to law. RX 7.

² Petitioner's then husband, Eric J. Miller, was a co-borrower on the note.

11. Petitioner works full time, earning \$8.50 per hour.
12. Petitioner supports her disabled adult child.
13. Petitioner's income and expenses reflect that she could not withstand garnishment at the maximum statutory rate of 15%.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Petitioner is indebted to USDA Rural Development in the amount of \$30,479.34 exclusive of potential Treasury fees for the mortgage loan extended to her and her co-borrower
3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
4. The Petitioner's income and expenses cannot withstand wage garnishment at the statutory maximum rate of 15%.
5. Wage garnishment as not greater than 5% of Petitioner's wage may be implemented after ninety (90) days from the date of this Decision and Order.
6. The garnishment shall be deferred for a 90 day period because Petitioner may have information that pertains to the discharge of debt under bankruptcy law.
7. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, Petitioner shall **NOT** be subjected to administrative wage garnishment **until after ninety (90) days from the date of this Decision and Order.**

Petitioner may request reconsideration of this Decision and Order should she locate and file with the Hearing Clerk information pertaining to the filing of bankruptcy petitions in the past.

The Hearing Clerk's address is: Hearing Clerk, Office of Administrative Law Judges, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 1031, South Building, Washington, D.C. 20250-9203, 202-720-4443; Fax: 202-720-9776; email: OALJHearingClerks@dm.usda.gov.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of amounts due from the government.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

So Ordered this 2nd day of February in Washington, D.C.

Janice K. Bullard
Administrative Law Judge