

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 10-0406
Jeffrey R. Cheatham,)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held on November 23, 2010. Mr. Jeffrey R. Cheatham, the Petitioner (“Petitioner Cheatham”), participated, representing himself (appearing *pro se*). Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Mary E. Kimball.

2. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
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4300 Goodfellow Blvd
St Louis MO 63120-1703

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Summary of the Facts Presented

3. Petitioner Cheatham owes to USDA Rural Development a balance of **\$10,987.96** in repayment of a loan that he borrowed in 1994. The loan was from the United States Department of Agriculture Farmers Home Administration, now known as USDA Rural Development. Petitioner Cheatham borrowed to buy a home in Indiana, and the **\$10,987.96** balance is now unsecured (“the debt”). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed November 1, 2010), which are admitted into evidence, together with the testimony of Mary Kimball. I agree with Ms. Kimball: the USDA letter dated 05/29/2001, stating that the balance of the debt had been canceled, was a

mistake that is not binding on USDA Rural Development. What should have gone out was a “debt settlement” letter instead. *See* RX-10.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$10,987.96** would increase the current balance by \$3,296.39, to \$14,284.35. *See* USDA Rural Development Exhibits, esp. RX-8, plus Ms. Kimball’s testimony, which updated RX-8.

5. The amount borrowed from USDA Rural Development was \$71,280.00 in 1994. By the time of the short sale and assumption in 2001, that debt had grown to \$87,622.54:

\$ 67,336.51	Principal Balance prior to assumption
\$ 5,092.19	Interest Balance prior to assumption
<u>\$ 15,193.84</u>	Fee Balance prior to assumption [\$6,876.97 was “Escrow Repairs;” \$5,075.00 was broker’s commissions]
\$ 87,622.54	Total Amount Due prior to assumption
=====	
- <u>\$ 72,500.00</u>	Total Amount Assumed after short sale
\$ 15,122.54	Unpaid in 2001

RX-6, RX-7.

So the short sale and assumption left \$15,122.54 unpaid in 2001. Another \$4,134.58 applied to the debt since then (*offsets* and garnishments), leaves **\$10,987.96** unpaid now (excluding the potential remaining collection fees). *See* RX-7, esp. p. 2; another \$613.20 has been applied since RX-7 was prepared. The **\$10,987.96** balance may have been reduced by the time this Decision is processed at Treasury, because garnishment is ongoing, and Petitioner Cheatham is paid every two weeks. This Decision **stops** the garnishment, at least through November 30, 2011.]

6. Also admitted into evidence are Petitioner Cheatham’s testimony, and Petitioner Cheatham’s Consumer Debtor Financial Statement (filed in November 2010), and his Hearing Request documents and statements (which included an earlier Consumer Debtor Financial Statement, dated in July 2010, which I have also taken into account). **Petitioner Cheatham proved that garnishment in any amount creates tremendous hardship for him.** He testified that he was out-of-work for 6 months, August 7, 2009 into February 2010, due to a black widow spider bite. Petitioner is delinquent on his home loan because of his income loss. Petitioner Cheatham’s physicians expected that he might lose his leg as a result of the black widow bite. He did undergo 9 surgeries and lost part of his foot. His medical expenses remain to be paid, including his hospitalization for 6 weeks in Tampa General, the home nursing care he required for 2 months following discharge, the bills for

his surgeons, anesthesiologists, wheelchairs, and the like. Prior to the spider bite, he required a 3-4 day hospitalization that he owes money for, perhaps [REDACTED] \$ [REDACTED]. The amount he owes for the spider bite is not yet determined but will be substantial.

7. Petitioner Cheatham proved that in his home, he supports 3 dependent children and his fiancée, in addition to himself. He has another dependent child, who lives primarily outside his home, for whom he pays [REDACTED] per month child support and provides medical insurance coverage. Petitioner Cheatham testified that his fiancée is not working; she was hit by a drunk driver and is being treated for her injuries. Based on what Petitioner Cheatham read from his October 15 pay stub, I calculate his gross pay as a truck driver to be about [REDACTED] per month; and his disposable pay (after subtracting Federal income tax, social security, Medicare, and health insurance withholding) to be about \$ [REDACTED] per month. I calculate Petitioner Cheatham's reasonable and necessary living expenses, for himself, his fiancée, and 4 children, to be about [REDACTED] per month, not counting his delinquent home loan payments and his medical bills.

8. When reasonable payments on his delinquent home loan payments and his medical bills are added to his reasonable and necessary living expenses, Petitioner Cheatham's disposable pay does not support garnishment, which would create hardship. 31 C.F.R. § 285.11.

9. Petitioner Cheatham is responsible and willing and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

10. Through November 30, 2011, NO garnishment is authorized. See paragraphs 6, 7 and 8. I encourage **Petitioner Cheatham and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Cheatham, this will require **you** to telephone the collection agency after you receive this Decision. Petitioner Cheatham, 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. The toll-free number for you to call is **1-888-826-3127**.

Findings, Analysis and Conclusions

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

12. Petitioner Cheatham owes the debt described in paragraphs 3 and 4.

13. **Through November 30, 2011, NO garnishment is authorized.** 31 C.F.R. § 285.11.

14. This Decision does not prevent repayment of the debt through *offset* of Petitioner Cheatham's **income tax refunds** or other **Federal monies** payable to the order of Mr. Cheatham.

Order

15. Until the debt is repaid, Petitioner Cheatham shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

16. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment **through November 30, 2011**.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 24th day of November 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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