

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 10-0217**
Charlene Mullin,)
)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on November 2, 2010. Ms. Charlene Mullin, also known as Charlene H. Mullin (“Petitioner Mullin”), is represented by Henry J. Leader, Esq.
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Mary E. Kimball. 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
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Summary of the Facts Presented

3. Petitioner Mullin owes to USDA Rural Development a balance of **\$11,263.90** (as of June 14, 2010) in repayment of a \$42,420.00 United States Department of Agriculture Farmers Home Administration loan made in 1989 for a home in New York, the balance of which is now unsecured (“the debt”). *See* USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed June 15, 2010), which are admitted into evidence.
4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$11,263.90** would increase the current balance by \$3,153.89, to \$14,417.79. *See* USDA Rural Development Exhibits, esp. RX-4.

5. The amount Petitioner Mullin borrowed in 1989 was \$42,420.00. The short sale in 1999 yielded \$19,126.89 plus \$343.00 in applied funds, for a total of \$19,469.89. RX-3. The remaining balance of the debt was \$20,980.01 after those funds were applied. RX-3. Interest in the amount of \$223.88 was added to the balance, to yield \$21,203.89 remaining to be paid. RX-3. *See also* RX-7. The \$21,203.89 balance had **not** been canceled. The mortgage discharge executed by USDA Rural Development in March 1999 did **not** cancel the remaining debt. The mortgage discharge merely released the security interest so that the home could be sold in the short sale, but Petitioner Mullin remained liable to repay the \$21,203.89 balance. She has made considerable progress repaying, during the past 10 years, reducing the remaining balance to **\$11,263.90**. RX-3.

6. Admitted into evidence are the testimony of Petitioner Mullin; Petitioner Mullin's Consumer Debtor Financial Statement filed November 29, 2010; Petitioner Mullin's "RX-7" dated January 5, 2004, filed November 2, 2010; Petitioner Mullin's documents filed in June 2010; and Petitioner Mullin's Hearing Request statements. Petitioner Mullin works a full day for the School District as a Library Aide. Her contract salary is [REDACTED] 5 per year, paid during 10 months. She works a second job calling substitutes.

7. I calculate Petitioner Mullin's gross pay for both jobs to be [REDACTED] per month (times 12 months for the year); and her disposable pay (gross pay minus Federal, State, Social Security, Medicare, and health insurance withholding) to be \$ [REDACTED] per month (times 12 months for the year). Petitioner Mullin's reasonable and necessary living expenses consume her disposable pay, even before her debts are considered. Petitioner Mullin's most onerous debt is [REDACTED] 0 in student loans, for which her pay is being garnished at a rate between \$200 and \$300 per month. She owes also a credit union loan and an ERS loan.

8. In evaluating the factors to be considered under 31 C.F.R. § 285.11, I find that Petitioner Mullin works a full day and has a second job in addition. She has health challenges and might like to retire; she is 60. If she were not already being garnished to pay student loans, garnishment at 15% of Petitioner Mullin's disposable pay would yield roughly [REDACTED] per month in repayment of the USDA Rural Development debt. Petitioner Mullin cannot withstand garnishment in that amount without hardship. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 3) must be limited to zero per cent (0%) of Petitioner Mullin's disposable pay through June 30, 2011; and no more than 5% of Petitioner Mullin's disposable pay thereafter. 31 C.F.R. § 285.11.

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

Discussion

10. Through June 30, 2011, NO garnishment is authorized. Thereafter, garnishment up to 5% of Petitioner Mullin's disposable pay is authorized. See paragraphs 6, 7 and 8. I encourage **Petitioner Mullin and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Mullin, 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 Mullin, 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.

Findings, Analysis and Conclusions

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

12. Petitioner Mullin owes the debt described in paragraphs 3, 4 and 5.

13. **Through June 30, 2011, NO garnishment is authorized.** Thereafter, garnishment **up to 5%** of Petitioner Mullin's disposable pay is authorized. 31 C.F.R. § 285.11.

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

Order

15. Until the debt is repaid, Petitioner Mullin 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).

16. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment **through June 30, 2011**. Thereafter, USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, **up to 5%** of Petitioner Mullin'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 1st day of December 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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