

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0032
Kurt D. Gilbert)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held on February 1, 2011. Kurt D. Gilbert, the Petitioner (“Petitioner Gilbert”), represents himself (appears *pro se*).
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
Bldg 105 E, FC-22, Post D-2
4300 Goodfellow Blvd
St Louis MO 63120-1703

mary.kimball@stl.usda.gov 314.457.5592 phone
314.457.4426 FAX

3. I encourage **Petitioner Gilbert and the collection agency** to work together to **establish a repayment schedule** rather than immediately proceeding with garnishment, even though this Decision authorizes garnishment in a limited amount beginning September 2011. Petitioner Gilbert, obviously, will have to make himself available to the collection agency if he wants to negotiate. See paragraph 11.

Summary of the Facts Presented

4. USDA Rural Development’s Exhibits, plus Narrative, Witness & Exhibit List, were filed on January 10, 2011, and are admitted into evidence, together with the testimony of Ms. Kimball.

5. Petitioner Gilbert's completed "Consumer Debtor Financial Statement," signed by Petitioner Gilbert and his wife on January 24, 2011, plus his typed statement, were filed on January 26, 2011, and are admitted into evidence, together with the testimony of Petitioner Gilbert.

6. Petitioner Gilbert owes to USDA Rural Development **\$18,699.07** in repayment of a Farmers Home Administration loan made in 1995 for a home in Texas, the balance of which is now unsecured ("the debt").

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$18,699.07**, would increase the current balance by \$5,235.74, to \$23,934.81. *See* USDA Rural Development Exhibits, esp. RX 7.

8. Petitioner Gilbert is repaying a student loan with a balance of about \$6,800.00 and considerable amounts on other indebtedness to several other creditors.

9. Petitioner Gilbert's disposable income is probably about \$3,000.00 per month.¹ [Disposable income is gross pay minus Federal, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.] Although Garnishment at 15% of Petitioner Gilbert's disposable pay would yield roughly \$450.00 per month in repayment of the debt, he cannot withstand garnishment in that amount without hardship. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 6) must be limited to 0% of Petitioner Gilbert's disposable pay through August 2011; then up to 7.5% of Petitioner Gilbert's disposable pay beginning September 2011 through February 2012; then up to 15% of Petitioner Gilbert's disposable pay thereafter. 31 C.F.R. § 285.11.

10. Petitioner Gilbert is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

11. Through August 2011, no garnishment is authorized. Beginning September 2011 through February 2012, garnishment up to 7.5% of Petitioner Gilbert's disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Gilbert's disposable pay is authorized. *See* paragraphs 8, 9 and 10. I encourage **Petitioner Gilbert and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Gilbert, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free

¹ Petitioner Gilbert said during the hearing he would FAX a copy of his pay stub. No pay stub copy was received, so my estimate is based on the Consumer Debtor Financial Statement that Petitioner Gilbert and his wife signed on January 24, 2011.

number for you to call is **1-888-826-3127**. Petitioner Gilbert, 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

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

13. Petitioner Gilbert owes the debt described in paragraphs 6 and 7.

14. **Garnishment is authorized**, as follows: through August 2011, **no** garnishment. Beginning September 2011 through February 2012, garnishment up to 7.5% of Petitioner Gilbert's disposable pay; and thereafter, garnishment up to 15% of Petitioner Gilbert's disposable pay. 31 C.F.R. § 285.11.

15. Repayment of the debt may also occur through *offset* of Petitioner Gilbert's **income tax refunds** or other **Federal monies** payable to the order of Mr. Gilbert.

Order

16. Until the debt is repaid, Petitioner Gilbert 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).

17. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through August 2011. Beginning September 2011 through February 2012, garnishment up to 7.5% of Petitioner Gilbert's disposable pay is authorized; and garnishment up to 15% of Petitioner Gilbert'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.

Done at Washington, D.C.
this 4th day of February 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776