

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0125

In re: Elizabeth Bogan,
Petitioner.

Decision and Order

This matter is before the Office of Administrative Law Judges upon the request of Elizabeth Bogan (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development (“USDA-RD”), and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. By Order issued February 9, 2011, the parties were directed to exchange information and documentation concerning the existence of the debt. In addition, the matter was set for a telephonic hearing to commence on March 15, 2011 and deadlines for filing documents with the Hearing Clerk’s Office were established. The parties were further instructed to provide contact information for participation in the hearing.

USDA-RD filed a Narrative, together with supporting documentation, on February 8, 2011. Petitioner did not file any documents, nor did Petitioner provide contact information as directed in the Order of February 9, 2011. However, Petitioner’s phone number was included in her request for a hearing.

On the scheduled date of the hearing, telephone calls were placed to Petitioner and USDA-RD’s representative, Esther McQuaid. Petitioner did not answer the

telephone, but a message was left on an answering machine. Ms. McQuaid confirmed that Petitioner had signed certified mail return receipt forms that acknowledged that she had received USDA-RD's narrative and exhibits. The official Hearing Clerk file reflects that the Order issued February 9, 2011 was sent to the same address used by USDA-RD and provided by Petitioner, and no undeliverable mail has been returned. After a sufficient time passed without Petitioner's response to the message, I proceeded with the hearing in her absence.

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. Petitioner Elizabeth Bogan qualified for benefits under a rental subsidy/assistance program administered by USDA-RD.
2. On July 15, 2005, Petitioner and two (2) minor children moved into an apartment and reported annual income of \$15,043.00 of which \$13,312 represented wages earned, which qualified her for assistance effective August 1, 2005.
3. In September, 2005, Petitioner reported that she was no longer employed, and her rent was further reduced.
4. Effective August 1, 2006, Petitioner re-certified that her annual income was \$3,311.00, with no wages earned.
5. On February 1, 2007, Derick Black moved into the apartment with Ms. Bogan, and a tenant certification completed at that time reflected household income of \$3,246.00.
6. No wages were disclosed as earned on the tenant certification completed on February 1, 2007.

7. A Wage Record Inquiry completed by the State of Louisiana revealed that both Petitioner and Derick Black were employed at times throughout the pendency of their residency.

8. Neither Petitioner nor Mr. Black reported their employment or income as required.

9. Accordingly, USDA-RD reconsidered whether Petitioner and Mr. Black properly received assistance during the periods of their employment, and concluded that a total of \$8,065.00 in unauthorized assistance had been paid.

10. Petitioner and Mr. Black's lease was canceled, and USDA-RD offered them the opportunity to enter into a repayment agreement in lieu of being subjected to debt collection action by the United States Department of Treasury ("Treasury").

11. The parties entered into a repayment agreement, with the first payment of \$25.00 monthly due May 1, 2008.

12. Payments in the aggregate of \$355.00 were made, but after payments were discontinued, the balance of the debt (\$7,710.00) was submitted to Treasury for collection on September 30, 2009.

13. As of the date of the hearing, March 16, 2011, the debt had been reduced to \$2,901.56.

14. At the time this collection action was initiated, Petitioner was employed.

15. As of the date of the hearing, Petitioner was no longer employed.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA Rural Development in the amount of \$2,901.56 exclusive of potential Treasury fees.
3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
4. USDA Rural Development has established that the Petitioner was given actual notice of the unauthorized assistance and an opportunity to cure any default.
5. The Petitioner acknowledged that the debt is valid by signing a repayment agreement.
6. As Petitioner is not employed, wage garnishment cannot be effected.
7. USDA-RD is **NOT** entitled to administratively garnish the wages of the Petitioner; however the debt shall remain at Treasury for any and all other appropriate collection action.

Order

For the foregoing reasons, these proceedings are terminated.

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

So ORDERED this 17th day of March, 2011 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge