

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 11-0107

In re: Charmaine Moore,

Petitioner

DECISION AND ORDER

This matter is before me upon the request of Charmaine Moore for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On January 14, 2011, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The USDA Rural Development (RD), Respondent, complied with that Order and a Narrative was filed, together with supporting documentation on January 31, 2011.

Ms. Moore filed documentation with her Petition relating to her sale/transfer of the residence to her co-borrower, Ricky Hathorn which I now label collectively as PX-1. On February 15, 2011 at the scheduled time, both parties were available for the conference call. The parties were sworn. Following the hearing, Ms. Moore forwarded her financial statements under oath and a bi-weekly pay stub which I now label as PX 2 and 3, respectively. Also, RD filed clarification to their prior submissions to the Hearing Clerk as Revised Narrative and Additional exhibits RX-9 and 10. Ms. Moore raised the issue of Financial Hardship.

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. On May 29, 1992, Ricky Hathorn and Charmaine Moore, the Petitioner obtained a \$ 40,000.00 USDA FmHA loan for a primary residence located at 116## Road 832, Philadelphia, MS 39###.¹ The Petitioner signed a promissory note and a mortgage. RX-1, RX-2.
2. On October 29, 1998, Petitioner, Charmaine Moore sold her remaining interest to Ricky Hathorn. RX-7 @ p. 8 of 9. Ms. Moore did not obtain a release of her obligation on the May 29, 1992 note and remained jointly and severally liable.
3. The borrowers defaulted on the loan and on September 28, 2004, she was mailed a notice of acceleration to her last known address. RX-4 @ p.1 of 11.
4. The property was appraised at \$25,000 on May 24, 2010. RX-11.
5. The Ricky Hathorn entered into a short sale on July 26, 2010 and USDA received a net of \$20,000 from the sale. RX-9.
6. At the time of the sale, Ms. Moore jointly and severally owed a total of \$54,216.29, including principal, interest and fees. Narrative, RX – 5 @ p. 1 of 2, RX-9.
7. After application of the sale proceeds, Ms. Moore jointly and severally owed \$34,216.29, plus uncollected interest of \$3,682.72, and uncollected Pre-foreclosure fee of \$232.78 for a total of \$38,131.79. RX-9.
8. Since the sale, RD has received a insurance refund in the amount of \$245.18 and a net \$3,128.00 from treasury. Narrative, RX 9.

¹ Complete address maintained in USDA files.

9. The remaining unpaid debt is in the amount of \$34,758.61 exclusive of potential Treasury fees. RX-9, 10.
10. The remaining potential treasury fees are \$9,732.41. RX-10.
11. Ms. Moore has been employed since March 2010.
12. Ms. Moore submitted her financial statements under oath which included her gross bi-weekly salary and monthly expenses. It appears her wages are barely more than the mandatory minimum wage. Although it appears from her February 2011 pay stub she did not have full time employment, I calculated Petitioner's potential wages at 40 hours per week.
13. Based upon the available financial information, I performed a Financial Hardship calculation using standard Federal and State Income Tax rate for head of Household. The result of the calculation is attached².

Conclusions of Law

1. Charmaine Moore is indebted to USDA Rural Development in the amount of \$34,758.61 for the mortgage loan extended to her.
2. Charmaine Moore is indebted to the US Treasury for potential fees in the amount of \$9,732.41.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner for a period of one year. After one year, RD may review the then existing financial statements and assess the legal entitlement to garnish her wages.

² The Financial Hardship Calculation will not be posted on the OALJ website.

Order

For the foregoing reasons, the wages of Charmaine Moore shall **not** be subjected to administrative wage garnishment for a period of one year.

After one year, RD may re-assess Ms. Moore's financial position.

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

Done at Washington, D.C.
April 18, 2011

JAMES P. HURT
Hearing Officer

Copies to:

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