

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0145**
Jean Constable,)
)
)
Petitioner) **Decision and Order**

1. The hearing was held by telephone as scheduled, on April 14, 2011. Ms. Jean Constable, also known as Delores Jean Constable, the Petitioner (“Petitioner Constable”) participated, representing herself (appearing *pro se*).

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Ms. Mary 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
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Summary of the Facts Presented

3. Petitioner Constable owes to USDA Rural Development a balance of **\$43,021.15** (as of March 2, 2011), in repayment of a United States Department of Agriculture / Rural Housing Service **Guarantee** (see RX-2, esp. p. 2) for a loan made in 2005, the balance of which is now unsecured (“the debt”). Petitioner Constable borrowed to buy a home in Kentucky. See USDA Rural Development Exhibits RX 1 through RX 8 which I admit into evidence, together with the Narrative, Witness & Exhibit List (filed March 21, 2011), and the testimony of Mary Kimball.

4. This ***Guarantee*** establishes an **independent** obligation of Petitioner Constable, “I certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to recover on the Federal debt directly from me. The Agency’s right to collect is independent of the lender’s right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender.” RX 2, p. 2.

5. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on of **\$43,021.15** would increase the current balance by \$12,045.92, to \$55,067.07. RX 8.

6. Petitioner Constable’s “Consumer Debtor Financial Statement” and accompanying documentation (filed March 25, 2011) are admitted into evidence, together with Petitioner Constable’s testimony, together with Petitioner Constable’s Hearing Request and accompanying documentation. Petitioner Constable is 70 years old; her ability to work was interrupted by her atrial fibrillation. Petitioner Constable is again working (beginning February 10, 2011), sewing, for \$8.00 per hour. Petitioner Constable’s disposable pay (within the meaning of 31 C.F.R. § 285.11) does **not** support garnishment and **no** garnishment is authorized. Petitioner Constable’s social security payments are already being ***offset***, which causes financial hardship.

7. Petitioner Constable is responsible and willing and able to negotiate the repayment of the debt with Treasury’s collection agency.

Discussion

8. **NO garnishment is authorized.** I encourage **Petitioner Constable and the collection agency** to **negotiate promptly** the repayment of the debt. Petitioner Constable, 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**. You may request a ***financial hardship discharge***. You may want to explain your health problems, including Atrial Fibrillation, and to obtain your physician’s statement for the collection agency. You may want to describe the impact of the death from Lou Gehrig’s disease¹ of your husband co-borrower, including the financial aftermath you are still coping with.

¹ Amyotrophic lateral sclerosis, or ALS, is a disease of the nerve cells in the brain and spinal cord that control voluntary muscle movement. ALS is also known as Lou Gehrig's disease.

Findings, Analysis and Conclusions

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

10. Petitioner Constable owes the debt described in paragraphs 3, 4 and 5.

11. **NO garnishment is authorized**, because garnishment would create financial hardship. 31 C.F.R. § 285.11. In fact, I recommend a *financial hardship discharge* of the debt.

12. Repayment of the debt may occur through *offset* of Petitioner Constable's **income tax refunds** or other **Federal monies** payable to the order of Ms. Constable. Petitioner Constable's social security payments are already being *offset*, which causes financial hardship.

Order

13. Until the debt is fully paid, Petitioner Constable 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).

14. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment. 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 22nd day of April 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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