

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Amy G. Robertson,)	Docket No. 12-0099
)	
Petitioner)	Decision and Order

Appearances:

J. Gilbert Parrish, Jr., Esq., Savannah, Tennessee, for the Petitioner Amy G. Robertson; and

Michelle Tanner, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, for the Respondent (USDA Rural Development).

1. Ms. Amy G. Robertson (“Petitioner Robertson”), is represented by J. Gilbert Parrish, Jr., Esq., who participated in the hearing by telephone on both February 1 and February 8, 2012. Petitioner Robertson participated on February 8, 2012.
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Michelle Tanner, who participated on both February 1 and February 8, 2012.

Summary of the Facts Presented

3. USDA Rural Development’s Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List, were filed on January 4, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.
4. Petitioner Robertson’s documents filed on February 6, 2012, are admitted into evidence, together with the testimony of Petitioner Robertson. The documents filed on February 6 include (a) Petitioner’s “Consumer Debtor Financial Statement” signed February 3, 2012, which was filed marked as RX 8; I have re-labeled it PX 8, since it is Petitioner’s exhibit; (b) the “paystub” from Wal-Mart showing Petitioner’s earnings and deductions for a 2-week pay period in late January 2012, which was filed marked as RX 9; I have re-labeled

it PX 9; and (c) the summary of Petitioner's life insurance contract which was filed marked as RX 10; I have re-labeled it PX 10. Also admitted into evidence are Petitioner's Hearing Request and accompanying documents (filed December 7, 2011).

5. Petitioner Robertson owes to USDA Rural Development a balance of **\$22,872.39** (as of February 7, 2012) in repayment of a United States Department of Agriculture Rural Housing Service loan made in 2007, for a home in Tennessee. The balance is now unsecured ("the debt"). See USDA Rural Development Exhibits RX 1 through RX 7, esp. RX 7, plus Narrative, Witness & Exhibit List. [Garnishment began in July 2011 (RX 7, p. 2); the balance may have been further reduced by the time I sign this Decision.]

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$22,872.39** would increase the current balance by \$6,404.27, to \$29,276.66. See USDA Rural Development Exhibits, esp. RX 7, p. 3, plus testimony of Ms. Tanner.

7. The amount Petitioner Robertson borrowed in 2007 was \$71,900.00. RX 1. The loan was accelerated for foreclosure on December 3, 2009. By the time the home was sold for \$53,000.00 on September 7, 2010, the debt had grown to \$74,629.84.

\$ 70,119.40	Unpaid Principal Balance prior to sale
\$ 3,284.34	Unpaid Interest Balance prior to sale
\$ 1,226.10	Recoverable costs and fees (fees can include unpaid real estate taxes, unpaid insurance premiums), interest on fees, NSF fee and late charge
<u>\$ 74,629.84</u>	
- <u>49,431.18</u>	Proceeds from the sale [plus \$3,568.82 which paid foreclosing costs]
<u>\$ 25,198.66</u>	Total Amount Due

RX 7, p. 1, and USDA Rural Development Narrative.

Interest stopped accruing when the proceeds of sale (\$49,431.18), were applied to the debt. Collections from Treasury since then (from Petitioner Robertson, through garnishment, plus *offset* of Petitioner Robertson's **income tax refund** intercepted February 7, 2012), leave **\$22,872.39** unpaid as of February 7, 2012 (excluding the potential remaining collection fees). See RX 7, pp. 2 and 3, and USDA Rural Development Narrative, plus Ms. Tanner's testimony.

8. Petitioner Robertson's interest subsidy was not recaptured. [Even though Petitioner Robertson defaulted, the benefit was not taken away.] RX 4, esp. p. 27, and Ms. Tanner's testimony.

9. Petitioner Robertson stated in her Hearing Request that she "submitted a compromise settlement which was never replied to". Petitioner Robertson did submit her Application. *See* RX 6, pp. 5-9. In response, using the address Petitioner Robertson had supplied on her Application (RX 6, p. 5), USDA Rural Development requested Petitioner Robertson to provide her last 2 consecutive bank statements (checking/savings or both), or a note stating she did not have any bank accounts. RX 6, p. 10. USDA Rural Development did not receive the bank statements or anything in response, so USDA Rural Development submitted the debt to the U.S. Treasury for collection, as required by statute.

10. Petitioner Robertson works full-time for Wal-Mart, making [REDACTED] per hour, plus an extra dollar for Sunday hours. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly [REDACTED] per month. [Disposable income is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.] 31 C.F.R. § 285.11.

11. Petitioner Robertson's Consumer Debtor Financial Statement does not show all her living expenses. [Her Statement shows no expense for food, no expense for clothing, no expense for insurance on her car; no expense for telephone, no expense for "sundries" or activities of any kind.] Petitioner Robertson testified that she spends about [REDACTED] per month on food, sometimes more. Petitioner Robertson testified that she cannot afford insurance on her car. Petitioner Robertson testified that she is paying [REDACTED] per month on one hospital debt and [REDACTED] per month on another hospital debt. Petitioner Robertson is separated, going through an uncontested divorce.

12. Garnishment at 15% of Petitioner Robertson's disposable pay has caused Petitioner Robertson financial hardship. To prevent further hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **5%** of Petitioner Robertson's disposable pay through May 2014; then **up to 10%** of Petitioner Robertson's disposable pay thereafter. 31 C.F.R. § 285.11.

13. Petitioner Robertson is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

14. Garnishment of Petitioner Robertson's disposable pay is authorized, in limited amount. *See* paragraph 12. Petitioner Robertson, you may want to telephone Treasury's

collection agency to **negotiate** the repayment of the debt. Petitioner Robertson, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Robertson, 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. Petitioner Robertson, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

15. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Robertson and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
16. Petitioner Robertson owes the debt described in paragraphs 5, 6 and 7.
17. To prevent further financial hardship, garnishment **up to 5%** of Petitioner Robertson's disposable pay is authorized, through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.
18. **No refund** to Petitioner Robertson of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.
19. Repayment of the debt may also occur through **offset** of Petitioner Robertson's **income tax refunds** or other **Federal monies** payable to the order of Ms. Robertson.

Order

20. Until the debt is repaid, Petitioner Robertson 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).
21. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Robertson's disposable pay through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.
22. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through **offset** or garnishment of Petitioner Robertson's pay, to be returned to Petitioner Robertson.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 9th day of April 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Michelle Tanner, Appeals Coordinator
USDA / RD Centralized Servicing Center
Bldg 105 E, FC-244
4300 Goodfellow Blvd
St Louis MO 63120-1703
michelle.tanner@stl.usda.gov

314-457-5775 phone
314-457-4547 FAX

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