

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 12-0285

In re: Brian Callahan

Petitioner

Decision and Order

This matter is before me upon the request of Petitioner 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 July 9, 2012, 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 Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-9 prior to my order on April 10, 2012. Mr. Callahan originally stated that he had legal counsel, however no attorney has filed an appearance in the case. Mr. Callahan filed his financial statements, pay stubs and later documentation on certain monthly expenses. on September 7, 2012 which I now label as PX-1, PX-2, and PX-3, respectively. After review of his financial statements, August 29, 2012, I issued an Order requesting further information related to his financial statement. RD requested a follow-up oral hearing and I concurred.

On September 27, 2012 and at the time set for the follow up hearing, both parties were available. Ms. Michelle Tanner represented RD. Mr. Callahan was self represented. The parties were sworn.

Petitioner has been employed for more than one year. Mr. Callahan is remarried. He and his wife have recently had a child. His wife will return to work on/about October 17, 2012. He provided her net bi-weekly income which was used in the Financial Hardship calculation as family monthly disposable income. The family unit owes substantial IRS payments for the next 7 months (April 2013). His wife is the owner of the residence that the family lives in and they share all household expenses. There are five persons in the household and two automobiles. Mr. Callahan has court-ordered child support related to his prior marriage. He and his current wife work at a location where there are highway tolls in both directions. The family unit has balances on five credit cards with large balances. He states that daycare for the two minor children will be required. There are no school loans. There is a monthly payment on one of the two automobiles. There are anticipated monthly out-of-pocket medical expenses. Petitioner's pay statement shows he is paid bi-weekly - instead of bi-monthly (26 not 24 pay periods per year). I added a Medicare tax at 1.45% of his gross wages.

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 June 28, 2003, Petitioner obtained a loan for the purchase of a primary home in the amount of \$117,918.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD)

- to purchase his home on a property located in Lakeland, Florida. RX-2 @ p. 3 of 3.
2. Prior to obtaining the loan, borrower signed a mortgage guarantee agreement on RD form 1980-21. RX-1.
 3. The borrower defaulted on the loan and it was accelerated for foreclosure. RX – 3 @ p. 8 of 15 & 10 of 15.
 4. At the foreclosure sale, Bank of America acquired and held the property for re-sale.
 5. On/about June 30, 2010, the property was purchased by a third party for the listed price of \$104,900.
 6. Prior to the sale the Borrower owed RD for \$110,857.65 as principal, \$8,577.42 as interest, \$8,694.83 as fees, plus interest on the fees of \$266.26 for a total of \$128,396.16 to pay off the RD loan. Narrative, RX-6.
 7. In addition, borrower owes \$14,741.47 to RD under the terms of the loan guarantee. RX-6.
 8. Treasury recovered \$3,291.43 after the foreclosure towards the loan. RX-6.
 9. After application of the proceeds of the sale to the third party, borrower owed \$34,946.20. RX-6.
 10. The remaining amount due of \$34,946.20 was transferred to Treasury for collection on April 9, 2012. RX-9 @ p.2 of 3.
 11. The potential Treasury collection fees were stated to be \$9,784.94 RX-9 @ p. 2 of 3.

12. Mr. Callahan has been employed for more than one year. There are two income earners in his household. There are three minor children in the home and Mr. Callahan is under a court ordered child support order for another child by a prior marriage.

13. Petitioner raised the issue of financial hardship and I utilized his financial statements and payroll information to prepare a Financial Hardship Calculation¹.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of \$34,946.20 - exclusive of potential Treasury fees for the mortgage loan extended to him.
2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$9,784.94.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is entitled to administratively garnish the wages of the Petitioner at the rate of one percent (1%) of his monthly disposable income through April 2013.
5. From and after April 2013, the Respondent is entitled to administratively garnish the wages of the Petitioner at the rate of nine percent (9%) of his monthly disposable income

Order

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at the rate of 1% of his monthly disposable income. After April 2013, the wages of Petitioner shall be subjected to administrative wage garnishment at the rate of 9% of his monthly disposable income.

¹ The Financial Hardship Calculation is not posted on the OALJ website.

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

October 3, 2012

James P. Hurt
Hearing Official

Copies to: Brian Callahan
Michelle Tanner
Dale Theurer

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