

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

In re:	)	
	)	<b>AWG Docket No. 11-0177</b>
Kelly Litchfield,	)	
	)	
Petitioner	)	<b>Decision and Order</b>

1. The hearing was held by telephone on June 2, 2011. Ms. Kelly R. Litchfield, full name Kelly Rae Litchfield, the Petitioner (“Petitioner Litchfield”) participated, represented by Janel B. Fredericksen, Esq.

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 and Marsha Moore. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant  
USDA / RD New Program Initiatives Branch  
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Summary of the Facts Presented

3. Petitioner Litchfield owes to USDA Rural Development a balance of **\$32,066.63** (as of June 2, 2011, *see* RX 9A), in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service **Guarantee** (*see* RX-2, esp. p. 2) for a loan made in 2007, the balance of which is now unsecured (“the debt”). Petitioner Litchfield borrowed, with the co-borrower, her husband, to buy a home in North Dakota. *See* USDA Rural Development Exhibits RX 1 through RX 9 together with the Narrative, Witness & Exhibit List (filed April 28, 2011); plus Exhibits RX 7A, RX 8A, and RX 9A together with the Updated Narrative & Exhibit List (filed June 2, 2011); and the testimony of Mary Kimball, all of which I admit into evidence.

4. This *Guarantee* establishes an **independent** obligation of Petitioner Litchfield, “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 **\$32,066.63** would increase the current balance by \$8,978.66, to \$41,045.29. RX 9A.
6. Petitioner Litchfield’s Exhibits PX 1 through PX 11, including her “Consumer Debtor Financial Statement” and accompanying documentation, together with her Narrative, Witness & Exhibit List (filed May 23, 2011), are all admitted into evidence, together with Petitioner Litchfield’s testimony, together with Petitioner Litchfield’s Hearing Request and accompanying documentation.
7. USDA Rural Development would not need to collect the debt from Petitioner Litchfield IF the co-borrower had done what was legally required of him (*see* PX 2, PX 3). The co-borrower was required to and failed to pay the debt on the home. Petitioner Litchfield was removed from the home, thanks to the action of the co-borrower (*see* PX 1), about nine months after the co-borrower and she bought the home. Nevertheless, although Petitioner Litchfield may pursue the co-borrower for monies collected from her on the debt, that does not prevent USDA Rural Development from collecting from her.
8. Petitioner Litchfield supports herself and her 3-year old daughter. Petitioner Litchfield testified that she works full-time (usually 40 hours per week) as a Restorative Therapy Aide (following the work of physical therapists and occupational therapists), for [REDACTED] per hour. Petitioner Litchfield’s disposable income may be about [REDACTED] to [REDACTED] per month (PX 11). [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.]
9. Petitioner Litchfield testified that she is under cardiac care and has already required a surgical procedure for tachycardia and may require installation of a pacemaker or other cardiac surgery; she is under treatment for a colon condition that includes ulceration; and she has ongoing chiropractic treatment that includes correction of residuals from an accident in 1997. Petitioner Litchfield has thus far been able to repay her medical expenses, but she is incurring ongoing medical expenses and has a \$2,500.00 deductible plus co-pay requirements. Petitioner Litchfield owes considerable amounts on indebtedness, primarily

\$20,000.00 in student loans and \$15,000.00 in attorneys' fees from her dissolution of marriage (PX 3) in March 2009 from the co-borrower. PX 4.

10. Petitioner Litchfield's disposable pay (within the meaning of 31 C.F.R. § 285.11) does **not** currently support garnishment and **no** garnishment is authorized through **June 2016**. Although Garnishment at 15% of Petitioner Litchfield's disposable pay could yield roughly [REDACTED] to [REDACTED] per month in repayment of the debt, she cannot withstand garnishment in that amount without financial hardship. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 3) must be limited to **0%** of Petitioner Litchfield's disposable pay through **June 2016**; then, following review of Petitioner Litchfield's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, beginning no sooner than July 2016, garnishment up to 15% of Petitioner Litchfield's disposable pay is authorized. 31 C.F.R. § 285.11.

11. Petitioner Litchfield is responsible and willing and able to negotiate the repayment of the debt with Treasury's collection agency.

#### Discussion

12. **NO garnishment is authorized through June 2016.** I encourage **Petitioner Litchfield and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Litchfield, 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 want to explain your health problems and to obtain your physicians' statements for the collection agency. You may want to request apportionment of debt between you and the co-borrower. 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.

#### Findings, Analysis and Conclusions

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

14. Petitioner Litchfield owes the debt described in paragraphs 3, 4 and 5.

15. **NO garnishment is authorized through June 2016**, because garnishment would create financial hardship. 31 C.F.R. § 285.11. Further, Petitioner Litchfield **shall be repaid the amounts already garnished** from her pay. [Garnishment is ongoing because Petitioner Litchfield's hearing request was late; it was late because she did not receive the notice sent to a wrong address, and her employer's notification was the first she had that her pay was being garnished.]

16. Then, following review of Petitioner Litchfield's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, **beginning no sooner than July 2016, garnishment up to 15% of Petitioner Litchfield's disposable pay is authorized.** 31 C.F.R. § 285.11.

17. This Decision does not prevent repayment of the debt through *offset* of Petitioner Litchfield's **income tax refunds** or other **Federal monies** payable to the order of Ms. Litchfield.

#### Order

18. Until the debt is fully paid, Petitioner Litchfield 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).

19. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment through **June 2016** and **shall repay the amounts already garnished** from her pay. Following review of Petitioner Litchfield's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, **beginning no sooner than July 2016, garnishment up to 15% of Petitioner Litchfield's disposable pay is authorized.** 31 C.F.R. § 285.11.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, **including both Petitioner Litchfield AND her attorney.**

Done at Washington, D.C.  
this 3<sup>rd</sup> day of June 2011

s/ Jill S. Clifton

Jill S. Clifton  
Administrative Law Judge

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