

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) **AWG Docket No. 11-0370**
)
Michelle D. Groves)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on October 6, 2011. Michelle D. Groves, the Petitioner (“Petitioner Groves”), participated, representing herself (appeared *pro se*). [Petitioner Groves was not available when the hearing was held at 11:00 a.m.; Petitioner Groves telephoned later, so the hearing reconvened to include her, at about 3:00 p.m.]

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Mary E. Kimball. 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. USDA Rural Development’s Exhibits, plus Narrative, Witness & Exhibit List, were filed on September 21, 2011, and are admitted into evidence, together with the testimony of Ms. Kimball.

4. Petitioner Groves’ Hearing Request including all accompanying documents, is admitted into evidence, together with the testimony of Petitioner Groves.

5. Petitioner Groves owes to USDA Rural Development **\$12,320.81** (as of September 20, 2011, *see* RX 6) in repayment of a USDA Farmers Home Administration loan borrowed in 1994 for a home in Michigan, the balance of which is now unsecured (“the debt”). *See* USDA Rural Development Exhibits, esp. RX 5.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$12,320.81**, would increase the current balance by \$3,449.83, to \$15,770.64. *See* USDA Rural Development Exhibits, esp. RX 6.

7. The amount Petitioner Groves borrowed with her then-husband, David M. Groves, from USDA Farmers Home Administration in 1994 was \$67,280.00. Petitioner Groves explained in her Hearing Request and her testimony that David Groves, her former husband, her co-borrower, should be required to pay his half:

I respectfully request a hearing so that I may further explain that why I should not be held accountable for David Groves half of the debt.

Petitioner Groves’ former husband filed Chapter 7 bankruptcy on 08/15/2000 and the debt was discharged on November 21, 2000. *See* Narrative. Even though Petitioner Groves’ former husband did not pay his share, this remains Petitioner Groves’ debt. USDA Rural Development is legally entitled to collect the entire amount from Petitioner Groves.

8. At the time of the short sale on November 18, 1998, the debt balance was \$66,450.58.

\$ 64,935.52	unpaid principal
1,265.06	unpaid interest, and
<u>250.00</u>	unpaid fees

\$ 66,450.58	
<u>=====</u>	

RX 5, page 1.

From the sale of the home (for \$45,000.00), \$39,011.54 was applied (leaving a balance owed of \$27,439.04); and an additional \$145.88 was applied (leaving a balance owed, after the short sale, of \$27,293.16). RX 5, p. 1 and p. 2. Since the short sale, no additional interest has accrued, and Treasury *offsets*, minus the collection fees, have paid down the debt by \$14,972.35, reducing the balance to **\$12,320.81**, as of September 20, 2011. RX 5, p. 2; RX 6.

9. When Petitioner Groves entered into the borrowing transaction with her co-borrower David Groves, in 1994, certain responsibilities were fixed, as to each of them. David Groves discharged his obligation through bankruptcy, leaving Petitioner Groves the only one paying the debt that had been her co-borrower's and her joint-and-several obligation. Petitioner Groves still owes the balance of **\$12,320.81** (excluding potential collection fees), as of September 20, 2011, and USDA Rural Development may collect that amount from her.

10. Petitioner Groves is very responsible. She has reared her children, and for the last 10 years or longer, she has done so without any child support. Her 18 year old son is in high school and lives with her; she contributes what she can toward the expenses of her 20 year old daughter who is no longer at home. Petitioner Groves testified that largely because of the debt at issue here, she has not been able to afford a house, a car, a t.v., or cable. Petitioner Groves testified that she works as a massage therapist, taking home about [REDACTED] to [REDACTED] every two weeks; and that she has never made more than [REDACTED] in a year. Petitioner Groves did not prepare a Consumer Debtor Financial Statement or any other income and expense analysis, but based on her testimony, I estimate that her gross pay averages [REDACTED] to [REDACTED] per month; and I estimate that her disposable pay (within the meaning of 31 C.F.R. § 285.11) averages [REDACTED] to \$ [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.] Petitioner Groves' reasonable and necessary living expenses, for herself and her children, consume her disposable pay.

11. It is Petitioner Groves who has made the substantial progress in repaying the debt here, especially through the *offsets* in 2007 and 2008. In addition to *offsets*, wage garnishment up to 15% of Petitioner Groves' disposable pay can occur unless she cannot withstand garnishment in that amount without hardship. 31 C.F.R. § 285.11. Although garnishment at 15% of Petitioner Groves' disposable pay could yield roughly \$ [REDACTED] to [REDACTED] per month in repayment of the debt, she cannot currently withstand garnishment in that amount without financial hardship.

12. Petitioner Groves' disposable pay (within the meaning of 31 C.F.R. § 285.11) does **not** currently support garnishment and **no** garnishment is authorized through **October 2013**. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Groves' disposable pay through **October 2013**; then, beginning no sooner than November 2013, following review of Petitioner Groves' financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Groves' disposable pay is authorized. 31 C.F.R. § 285.11.

13. Petitioner Groves is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

14. Through **October 2013**, **no** garnishment is authorized. Then, beginning no sooner than November 2013, following review of Petitioner Groves' financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Groves' disposable pay is authorized. *See* paragraphs 10, 11 and 12. I encourage **Petitioner Groves and Treasury's collection agency to negotiate** the repayment of the debt. Petitioner Groves, 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**. You may choose to request consideration of the substantial progress you have already made repaying; and consideration of the unfair burden placed on you by the bankruptcy discharge obtained by your co-borrower. You may choose to offer to compromise the debt for an amount you are able to pay, to settle the claim for less. You may choose to offer to pay through solely **offset** of **income tax refunds**, perhaps with a specified amount for a specified number of years. You may have anyone you choose, including your lawyer, with you on the phone when you telephone to negotiate.

Findings, Analysis and Conclusions

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

16. Petitioner Groves owes the debt described in paragraphs 5 through 9.

17. **Garnishment is authorized**, as follows: **through October 2013**, **no** garnishment. Then, beginning no sooner than November 2013, following review of Petitioner Groves' financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Groves' disposable pay. 31 C.F.R. § 285.11.

18. Repayment of the debt may also occur through **offset** of Petitioner Groves' **income tax refunds** or other **Federal monies** payable to the order of Ms. Groves.

Order

19. Until the debt is repaid, Petitioner Groves 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).

20. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through October 2013. Beginning no sooner than November 2013, following review of Petitioner Groves' financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Groves' 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.

Done at Washington, D.C.
this 7th day of October 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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