

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0145

In re: KORI MILLER,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Kori Miller 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 March 10, 2010, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved and to direct the exchange of information and documentation concerning the existence of the debt.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on April 1, 2010. The Petitioner also responded, filing material which set forth a summary of her monthly expenses and repeating her position that as a single mother on limited income with no child support, she was unable to pay the amount alleged to be due. A telephonic hearing was scheduled to be conducted on May 18, 2010; however, Ms. Miller could not be reached by telephone. Nothing further having been received from the Petitioner, the request for hearing will be considered waived and the issues before me will be decided upon the record.

The Narrative filed by the Respondent reflects that foreclosure proceedings were brought by the lender against the Petitioner and the property was sold in a foreclosure sale. USDA however was not a party to that action and the debt that is being sought to be collected arises under the Request for Single Family Housing Loan Guarantee signed by the Petitioner by which she agreed to reimburse the agency in the event a loss claim was paid on the loan. As a result of the foreclosure action, USDA Rural Development was obligated to pay the lender the sum of \$20,173.49 for accrued interest, protective advances, liquidation costs and property sale costs. Potential fees assessed by the Treasury are \$5,648.57, making the balance due at Treasury \$25,822.06.

On the basis of the record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On July 20, 2005, Kori Miller applied for and received a home mortgage loan guarantee from the United States Department of Agriculture (USDA) Rural Development (RD) (Exhibit RX-1) and on August 8, 2005 obtained a home mortgage loan for property located at 211 S 4th Street, Colby, Wisconsin from Countrywide Home Loans for \$68,000.00. RX-2.
2. In 2006, the Petitioner defaulted on the mortgage loan and foreclosure proceedings were initiated. RX-2.
3. The home did not sell during the six month marketing period and the lender's claim in the amount of \$20,173.49 was paid based upon a liquidation appraisal of \$62,000.00. The home later sold on November 21, 2008 for \$45,000.00 resulting in no additional recovery. RX-4.

4. The remaining unpaid debt including potential Treasury fees is in the amount of \$25,822.06.

5. The Petitioner has a gross income of approximately \$1,700.00 per month prior to deductions for payroll taxes. Her monthly expenses which appear to be reasonable equal, if not exceed, her disposable income.

Conclusions of Law

1. Kori Miller is indebted to USDA Rural Development in the amount of \$20,173.49 not including potential Treasury fees for the mortgage loan guarantee extended to her. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met; however, she has demonstrated sufficient financial hardship to preclude garnishment at this time.

2. The Respondent is **NOT** entitled to administratively garnish the wages of the Petitioner for a period of one year.

3. Should review of the Petitioner's financial condition show significant improvement after a period of a year, new proceedings may be commenced after notice to the Petitioner.

Order

For the foregoing reasons, the administrative wage garnishment proceedings are **DISMISSED**, without prejudice to be being reinstated after a period of a year upon a showing of significant improvement in her financial condition.

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

Done at Washington, D.C.
May 18, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Kori Miller
Mary Kimball
Dale Theurer

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776