

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 11-0188

In re: Michelle Luna-McGimsey

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 April 20, 2011, 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-11 on April 22, 2011. The Petitioner filed her financial statement on June 28, 2011 (which I now label as PX-1 thru PX-4), her separate Monthly Expense Statement which I now label as PX-5), her 4/28/2011 earnings statement which I now label as PX-6. Petitioner has been employed for more than one year, but she has been advised that her employment in Texas will terminate soon after January 2012. Petitioner is now divorced or separated and has two minor children living with her. She is scheduled to receive court ordered child support, but the support payments are now four months in arrears.

Petitioner has substantial student loans with Federal Student Aid which pre-exist this hearing. Upon consideration, RD will not object to Petitioner's support of her church and will not object to inclusion of a monthly repay of a 410(K) loan as an expense. On August 12, 2011, Petition filed additional documents consisting of additional Earnings Statements (which I now label as PX-7 through PX-12), a new Monthly Expenses statement (which I now label as PX-13), a statement of her FSA loan payment schedule (which I now label as PX-14 & PX-15), her employer's estimated termination date Notice (which I now label as PX-16), her Child support payment log (which I now label as PX-17).

On June 7, 2011, at the time set for the hearing, both parties were available for the hearing. Ms. Kimball of RD was representing RD and was present for the telephone conference. Ms. McGimsey was available and represented herself.

Ms. McGimsey raised the issue financial hardship. I prepared a Financial Hardship Calculation using the information supplied by Petitioner. 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 October 3, 2007, Petitioner assumed a loan from ex-husband – variously Ivan or Ian McGimsey for the purchase of a primary home mortgage loan in the amount of \$88,400 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in 1### Indian W****, Midlothian, TX 760##¹.

RX-1, RX-2.

¹ The complete address is maintained in USDA files.

2. Borrower reamortized her account on April 18, 2008 bringing the principal amount due to \$168,720.73.
3. The borrower became in default and a Notice of Acceleration was mailed on November 4, 2008. RX-6, RX-7.
4. A short sale was held on April 23, 2010. RX-8.
5. RD received net \$95,770.16 from the sale. Narrative, RX-9, RX-10.
6. The principal loan balance for the RD loan prior to the foreclosure was \$168,506.15, plus \$21,518.60 for accrued interest, plus \$6,599.18 for fees for a total of \$196,837.72. Narrative, RX-10.
7. After the sale proceeds were applied, borrowed owed \$101,067.56 plus a pre-foreclosure fee of \$663.00 for a total of \$101,730.56. Narrative, RX-10.
8. The remaining unpaid debt is in the amount of \$101,730.56 - exclusive of potential Treasury fees. RX-10.
9. The remaining potential fees from Treasury are \$28,484.56. RX-11.
10. Ms. McGimsey states that she has been gainfully employed for 4 years. PX-1.
11. She expects to be unemployed after January, 2012. PX-16.
12. She is the custodial parent of two minor children and although is due to receive court ordered child support – that support has only been partially paid since May 2011.
13. She owes an outstanding balance to the Federal Student Aid fund. PX-14, PX-15.
14. I performed a Financial Hardship calculation using the financial statements she provided².

Conclusions of Law

² The Financial Hardship calculation is not posted on the OALJ website.

1. Petitioner is indebted to USDA Rural Development in the amount of \$101,730.56 exclusive of potential Treasury fees for the mortgage loan extended to her.
2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$28,484.56.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner at this time.

Order

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After March, 2012, RD may re-assess the Petitioner's financial position.

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

August 15, 2011

James P. Hurt
Hearing Official

Copies to: Michelle Luna McGimsey
Mary Kimball
Dale Theurer

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