

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE SECRETARY OF AGRICULTURE**

In re: ) AWG Docket No. 12-0501  
Terry Smith, )  
Petitioner )

**Stay Order**

This matter is before me upon the request of the Petitioner, Terry Smith, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against her. On July 27, 2012, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt. Rural Development filed its Narrative and Exhibits on August 20, 2012.

On August 28, 2012 at the scheduled time, both parties were available for the conference call. Ms. Smith was represented by John S. Odom, Jr. Esq. Petitioner's position is that the 2009 default judgment in favor of the Kentucky Housing Corporation was improperly granted. Further, her position is that the Servicemembers Civil Relief Act (SCRA) 50 U.S.C. App.511(5) is/was controlling at the time of the default judgment since Matthew Smith (husband of Terry Smith – The Petitioner herein) was on active military duty in Afghanistan from April 2008 through April 2012. Px 1 @ P. 1 of 2. She further contends that SCRA is also controlling with regard to her, the spouse, of the active service member. Mr. Odom advised that a State Circuit in Taylor County, Kentucky will address the underlying issues related to SCRA and Kentucky law. That hearing is presently scheduled for September 10, 2012. (See Petitioner's Exhibit "A").

Although, Mr. Odom urged that I decide the merits of Petitioner's defense to this administrative wage garnishment issue as it relates to the SCRA and/or Kentucky law, I decline to take that course, especially when many of the same issues (the alleged defective default

judgment) are to be heard in a Circuit court of Petitioner's state. Mr. Odom urged that I do have the power to stay this administrative action pursuant to 50 USC 511 (5) and 50 USC 524 (a)(2).

RD stated that they did not object to a stay while the underlying issues are resolved in the Kentucky State court. The length of any stay may be limited to 90 days after active service terminates under 50 USC 524 (b). Mr. Odom advised that even though the Kentucky case is scheduled within one week, he anticipates that out of court negotiations may take longer.

### **Conclusions of Law**

1. Petitioner, Terry Smith and her husband Matthew Smith, are indebted to USDA's Rural Development program.
2. Petitioner is under a duty to inform USDA's Rural Development of his current address, employment circumstances, and living expenses.
3. RD may not administratively garnish Petitioner's wages during the pendency of this stay order.
4. The administrative wage garnishment action against Terry Smith is stayed 30 days.

### **Order**

1. The Administrative Wage Garnishment is STAYED during the pendency of this stay order.
2. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

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**JAMES P. HURT**  
Hearing Official  
September 7, 2012

Terry Smith (via John Odom, Jr., Esq.)

Michelle Tanner

Dale Theurer