

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 10-0354**
Brian Engebretson)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on October 6 & 13, 2010. Brian Engebretson, also known as Brian S. Engebretson, the Petitioner (“Petitioner Engebretson”), represented himself (appeared *pro se*). Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Mary E. Kimball.

2. 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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4300 Goodfellow Blvd
St Louis MO 63120-1703

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3. I encourage **Petitioner Engebretson and the collection agency** to work together to **establish a repayment schedule** rather than immediately proceeding with garnishment, even though this Decision authorizes garnishment, up to 4% of Petitioner Engebretson’s disposable pay through October 2011; and up to 7.5% of Petitioner Engebretson’s disposable pay thereafter. Petitioner Engebretson, obviously, will have to make himself available to the collection agency if he wants to negotiate. *See* paragraph 9.

Summary of the Facts Presented

4. Petitioner Engebretson owes to USDA Rural Development a balance of **\$40,422.37**, in repayment of a loan guarantee of a Chase loan (RX-1) made in 2004 for a home in

Minnesota, the balance of which is now unsecured (“the debt”). *See* USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed August 17, 2010), which are admitted into evidence, together with the testimony of Ms. Kimball.

5. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$40,422.37** would increase the current balance by \$11,318.26, to \$51,740.63. *See* USDA Rural Development Exhibits, esp. RX-5.

6. Petitioner Engebretson provided with his Hearing Request a completed “Consumer Debtor Financial Statement” dated May 10, 2010, plus his earnings record that shows his 2009 income and payroll deductions. These documents are admitted into evidence, together with the testimony of Petitioner Engebretson. Petitioner Engebretson described his financial difficulties. I find that Petitioner Engebretson lives modestly (his living expenses reported on his Statement are less than the “standard” living expenses allowed). I calculate his disposable income as [REDACTED] per month (gross pay minus Federal, State, Social Security, and Medicare withholding), before subtracting his monthly child support payments and his monthly payments to the Internal Revenue Service.

7. Petitioner Engebretson’s testimony proves that he pays [REDACTED] per month in support of his children (including his share of their medical expenses); and that he pays [REDACTED] per month to the Internal Revenue Service, with a portion of each payment going toward interest and penalties. When the child support and IRS payments, plus Petitioner Engebretson’s reasonable living expenses, are subtracted from his disposable income, he has little remaining available for garnishment without causing hardship. 31 C.F.R. § 285.11. I have taken these obligations into account in limiting the potential garnishment to repay “the debt” (*see* paragraph 4) to no more than 4% of Petitioner Engebretson’s disposable pay through October 2011; and no more than 7.5% of Petitioner Engebretson’s disposable pay thereafter. 31 C.F.R. § 285.11.

8. Petitioner Engebretson is responsible and willing and able to negotiate the disposition of the debt with Treasury’s collection agency.

Discussion

9. Through October 2011, garnishment up to 4% of Petitioner Engebretson’s disposable pay; and thereafter, garnishment up to 7.5% of Petitioner Engebretson’s disposable pay; is authorized. *See* paragraphs 7 and 8. I encourage **Petitioner Engebretson and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Engebretson, this will require **you** to telephone the collection agency about two to three weeks after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Engebretson, 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.

10. Petitioner Engebretson has made some progress repaying, through his income tax refund.

Findings, Analysis and Conclusions

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

12. Petitioner Engebretson owes the debt described in paragraphs 4 and 5.

13. **Garnishment is authorized**, as follows: through October 2011, garnishment up to 4% of Petitioner Engebretson's disposable pay; and thereafter, garnishment up to 7.5% of Petitioner Engebretson's disposable pay. 31 C.F.R. § 285.11.

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

Order

15. Until the debt is repaid, Petitioner Engebretson shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

16. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, up to 4% of Petitioner Engebretson's disposable pay through October 2011; and garnishment up to 7.5% of Petitioner Engebretson's disposable pay thereafter. 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 20th day of October 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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