

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 12-0526

In re: Andy Schlageter,
a/k/a Andrew Schlageter

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 October 11, 2012, 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-7 on October 31, 2012. Petitioner submitted his financial statements along with his petition for hearing. On November 28, 2012, at the time set for the hearing, both parties were available. Ms. Esther McQuaid represented RD. Mr. Schlageter was self-represented. The parties were sworn.

Petitioner did not submit any written evidence relating to the unauthorized rental assistance. RD's exhibit Narrative at page 2 indicates that the Tenant Certification Form RD 3560-8 signed on on/about 9/22/2008. The usual accompanying documents to the

tenant certification require the tenant to report any increases in income. RX-1 @ p. 4 of 6 however, RD's exhibits do not include any statement of tenant's duty signed by the tenant for the initial rent subsidy period. For the recertification of eligibility on/about September 1, 2009, RD's exhibits included a signed notice to the tenants that they had a duty to report any increase in income. RX-1 @ p. 4 of 6. The tenant failed to report an increase in income beginning the 4th quarter of 2008. An investigation of the family unit income shows that the undeclared employment income justified a recalculation of the tenant's eligibility or amount of authorized rental assistance.

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 1, 2008 (RX-1 @ p. 1 of 6), and on September 1, 2009 (RX-1 @ p. 5 of 6), Andy Schlageter and Dawn Schlageter signed RD 3560-6. (The USDA-Rural Housing Service Tenant Certification).
2. In each case, Mr. Schlageter's signature appeared on the form below the printed words "I will reimburse the agency the unauthorized amount."
3. Along with the annual September 1, 2009 re-certification, Andy Schlageter and Dawn Schlageter signed a separate "Recertification Interview Checklist" that they had no form of income except child support." RX-1 @ p. 3 of 6.
4. In the same Recertification form, Andy Schlageter and Dawn Schlageter committed to report and increases in income. RX-1 @ p.3 of 6.
5. From the fourth quarter of 2008, Dawn Schlageter was gainfully employed at Target Corporation. RX-3 @ page 2 of 2.

6. From the first quarter of 2009, Andy Schlageter was gainfully employed at Action Temporary Services, and then Heartland Indiana Food Corp., and then Express Services, and then Gibson County Quality Assurance. RX-3 @ p. 1 of 2.
7. On February 26, 2010, Andy Schlageter and Dawn Schlageter vacated the premises. RX- 7 @ p. 2 of 2.
8. Based upon Wage match records from the state of Indiana (RX-3) and the prescribed calculations for unauthorized rental assistance, RD calculated their combined unauthorized rental assistance to be \$5,004.00. RX-5 @ p. 5 of 5.
9. Andy Schlageter is jointly and severally liable for the unauthorized rental assistance.
10. In addition, Andy Schlageter is jointly and severally liable for potential treasury fees of up to 28 percent of the amount of any garnished wages.
11. RD did not categorize Andy Schlageter's actions as "fraudulent," therefore I would consider his request for a future financial hardship calculation at the time when his income becomes subject to garnishment.
12. Andy Schlageter has worked only approximately 7 months without interruption or voluntary unemployment, therefore he is not subject to wage garnishment at this time.

Conclusions of Law

1. Petitioner is jointly and severally indebted to USDA Rural Development in the amount of \$5,004.00 exclusive of potential Treasury fees for the unauthorized rental assistance given to him.

2. In addition, Petitioner is jointly and severally indebted for potential fees to the US Treasury in the amount of \$1,401.12.
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. RD may reconsider Petitioner's income in May 2013.

Order

For the foregoing reasons, the wages of Petitioner shall not be subjected to administrative wage garnishment at this time. After 5 months, 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.

December 17, 2012

James P. Hurt

Copies to: Andy Schlageter
 Esther McQuaid
 Dale Theurer

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