

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0045
)
Maria Leon,)
)
Petitioner)

Interim Decision and Order

This matter is before me upon the request of the Petitioner, Maria Leon, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against her as a result of unauthorized rental assistance. On December 8, 2009, I issued a Pre-Hearing Order requiring the parties to exchange information concerning the amount of the debt. I conducted a telephone hearing at the scheduled time on February 10, 2010. USDA Rural Development Agency (RD) was represented by Gene Elkin, Esq., and Mary Kimball who testified on behalf of the RD agency. Witnesses for RD were Evelyn Suarez, Area Technician of the Florida field office, Tresca Clemmons of the Multi-Family Housing Programs. Cathy Swanson, Theresa Purnel, Catrina Southall, and Sandy Weiss were present but did not testify.

Petitioner was self represented.

The witnesses were sworn in. RD filed a copy of a Narrative along with exhibits RX-1 through RX-10 on January 8, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. After the hearing, RD filed "Addition to Narrative and RX- 11 and RX-12.

Petitioner submitted documents or exhibits as follows: 14 numbered pages of a FAX dated 01/19/2010 (which I now number as PX-1 (page # of #), an exhibit numbering 3 pages of a

FAX dated January 19, 2010 (which I now number as PX-2 (page # of #), an exhibit numbering 11 pages of a FAX dated January 10, 2010 (which I now number as PX-3 (page # of #), and a single page of the lower half of a RD-2560-8 form which carries a FAX date of January 7, 2008 (which I now number as PX-4). Ms. McQuaid acknowledged that RD had received the Petitioner's submissions subsequent to the Hearing.

Petitioner was available for the telephonic hearing, but she requested that the hearing be rescheduled for another date. I denied her request for a postponement. She then requested a English/Spanish interpreter. I denied her request. She stated she did not know what this hearing was about. I reminded her that she had from November 17, 2009 until the date of the hearing to seek help and to have someone whom she trusted to translate the testimony. Since I had preliminarily reviewed the exhibits prior to the hearing, I noted that her hand-written Hearing Request of November 17, 2009 was composed of near perfect English and further that at other times letters by her or written on her behalf (PX-1 thru PX-3) seemed to grasp the essence of the issues.

Petitioner owes \$6,745 on the USDA RD rental assistance program as of today, pursuant to the terms of the CFR regulations.

Findings of Fact

1. On March 16, 2005, Petitioner Maria Leon completed a monthly Budget/Financial Statement when she applied for rental assistance and signed as Applicant/Tenant with Initials "MEL" RX-11. Petitioner also signed a USDA-Tenant Certification effective June 1, 2005 again with her initials MEL. RX-12.

2. In the exhibits submitted by Petitioner, which included her four personal checks (PX-3 @ p. 9 of 11), OMB form No. 0575-0189 dated 7/08 (PX-3 @ p. 2 of 11) she signed important

financial documents with only her initials MEL.

2. By signing the forms RX-11 and RX-12 with her initials MEL, she certified their accuracy and stated that her perspective annual income was \$910/month (annual rate of \$10,920) in March, 2005 and \$5,418 per year in June 2005. She also included her mother's SSI income of \$2000.

3. Contemporaneously while she was making an application for rental assistance and certifying the annual incomes in F.O.F. # 2 above, she was gainfully employed at the Wal-Mart Associates Company earning [REDACTED] for the first two quarters of 2005 and eventually earning [REDACTED] for the year of 2005. RX-2 (replacement copy).

4. The USDA RD rental assistance program is administered in accordance with 7 CFR ¶ 3560.151 *et seq.* which sets up a rational basis for state administrators to determine the allocation of the scarce resources of multi-family housing stock for prospective tenants. RX-1

5. By submitting utterly false annual income statements, the Florida state agency in reliance on Petitioner's income statement, allowed Petitioner to "jump the line" ahead of other applicants having lesser incomes.

6. The Rental Assistance program pays a portion of the monthly residential rent for eligible applicants. Rental Assistance paid a significant portion of Petitioner's rent at the Osprey Landing I Apartments rent for Unit No. 5##.¹ RX-3, RX-4, RX-5, RX-6, RX-7, RX-8, RX-9.

7. Under 7 CFR ¶ 3560.158, the Petitioner failed to meet the ongoing eligibility requirements of 7 CFR ¶ 3560.152.

7. The amount of unauthorized rental assistance attributable to Petitioner from May 1, 2005 through July, 1, 2007 as a result of her false financial documents is \$6,745.00. RX-3

¹ Complete addresses are maintained in USDA records.

8. Maria Leon is liable for recovery of Unauthorized Rental Assistance under the terms of 7 CFR ¶ 3560.701 *et seq.* (Unauthorized assistance).

9. Petitioner submitted a Wal-Mart Associates Pay stub for the week of January 7, 2010 showing her gross weekly wages and payroll deductions. PX-1 @ p. 3 of 14.

Conclusions of Law

1. Petitioner Maria Leon is indebted to USDA's Rural Development program in the amount of \$6,745.

2. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. ¶ 285.11 have been met.

3. Petitioner is under a duty to inform USDA's Rural Development of her current address, employment circumstances, and living expenses.

4. Following compliance with 31 C.F.R. ¶ 285.11(i) and (j), the USDA Rural Development Agency (RD) is entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, provided the requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met, the wages of the Petitioner, Maria Leon, shall be subject to administrative wage garnishment at the rate of 15% of Monthly Disposable Income.

The Hardship Calculation (attached herewith) has been printed in M.S. Excel™ Spreadsheet format. Any new or additional financial information must be under the continuing oath of the hearing.

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

JAMES P. HURT
Hearing Official

February 23, 2010