

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,655

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Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Office of Child Support Enforcement (OCSE) to withhold \$396.46 in child support payable to the petitioner as partial "reimbursement" for an overpayment that occurred in a month when the petitioner simultaneously received ANFC benefits from the Department of Social Welfare (DSW) and child support payments from OCSE that were in excess of her ANFC. The issues are whether the petitioner was overpaid ANFC and/or child support, and, if so, whether OCSE is authorized under the pertinent regulations to withhold child support otherwise payable to the petitioner in order to "offset" such an overpayment.<sup>(1)</sup>

FINDINGS OF FACT

The facts are not in dispute. The petitioner lives with her three minor children. She received ANFC benefits through June, 1993. Her June, 1993, ANFC benefit was \$667.

In January, 1993, OCSE obtained a child support order against the petitioner's former husband (the children's father) for \$808.98 per month through the withholding of his wages. Because this amount exceeded the amount of the petitioner's ANFC, DSW, in April, 1993, sent the petitioner a notice that effective May, 1993, her ANFC would be terminated.<sup>(2)</sup> However, because the petitioner had not yet received any child support payments from OCSE, she appealed the termination of her ANFC.

Following the petitioner's request for fair hearing, DSW reinstated the petitioner's ANFC, and she received her benefit of \$667 for May and June, 1993. However, in June, 1993, OCSE mailed the petitioner the entire amount of child support it had collected that month--\$883.50--from the father of the petitioner's children. Following her receipt of this payment the petitioner withdrew her appeal of the termination of her ANFC. This resulted, however, in a decision by DSW that the petitioner had been overpaid ANFC of \$667.00 for June, 1993. The petitioner appealed, but subsequently withdrew her appeal of that decision.

In August, 1993, the petitioner requested OCSE to review whether it had underpaid her child support in months in which it had collected more support than the petitioner had been paid in ANFC. OCSE

determined that it had indeed underpaid the petitioner child support in several different months. OCSE and the petitioner subsequently agreed that the total amount of those child support underpayments was \$396.46.

However, because the petitioner had received a full ANFC payment for June, 1993, in addition to having been paid \$883.50 in child support for that month, OCSE refused to turn any of the \$396.46 "underpayment" over to the petitioner, claiming that it should be used instead to "offset" the "overpayment of child support" the petitioner received in June, 1993. The petitioner filed the instant request for fair hearing to appeal this course of action, claiming that under the regulations OCSE is bound to pay her all past-due child support regardless of any outstanding overpayment.

### ORDER

The decision by OCSE that the petitioner was overpaid \$883.50 in child support for June, 1993, is modified. The amount of the overpayment of child support for June, 1993, should be declared to be the amount of ANFC the petitioner was paid that month, \$667. The decision by OCSE that the underpayment of child support to the petitioner can be used to offset the larger overpayment to her is affirmed.

### REASONS

The ANFC regulations provide that in any month in which an individual receives a "payment" of ANFC benefits the amount of child support to be paid to the household (if the amount of child support collected exceeds the amount of the ANFC payment) is the difference between the ANFC payment and the support collected. W.A.M. § 2331.36. The petitioner does not dispute DSW's decision, made in April, 1993, to terminate her ANFC because OCSE for several months had been collecting child support in excess of her grant amount. See W.A.M. § 2331.39. There is no question, however, that once the petitioner requested a fair hearing, DSW properly continued paying her ANFC. See W.A.M. § 2218.2. There also does not appear to be any dispute (at least the petitioner does not argue otherwise) that OCSE should not have paid the petitioner the full amount of the child support it was collecting for any month (including June, 1993) in which the petitioner was still being paid ANFC.<sup>(3)</sup> See W.A.M. § 2331.36.

When DSW paid the petitioner her June ANFC--which, under its own regulations (*supra*), it was required to do-- OCSE had not yet sent her any child support for that month. Even though DSW's notice of its intention to terminate the petitioner's June, 1993, ANFC was correct, once the petitioner appealed that decision no overpayment occurred until OCSE mistakenly (see *supra*) sent the petitioner her full child support for June, 1993. The overpayment, however, was child support--not ANFC.

In retrospect, DSW's decision that the petitioner was overpaid ANFC for June, 1993, was incorrect.<sup>(4)</sup> Be that as it may, the petitioner is correct in arguing that the Board at this time has no "jurisdiction" to reverse the DSW's decision that she was overpaid ANFC in June, 1993.<sup>(5)</sup> However, the petitioner cannot rely on this erroneous decision by DSW, and her ill-advised failure to appeal it, to legitimize the erroneous decision by OCSE to pay her the full amount of her child support in that month and to reap a windfall (over and above what she has already obtained) as a result of OCSE's error. The amount of the child support overpayment in June, 1993, was \$667--which is the amount the petitioner had already (correctly) received in ANFC for that month. The decision by OCSE that the petitioner was overpaid child support for June, 1993, should be affirmed; but the amount of the overpayment should be modified

in accordance with the above.

As to how this affects the undisputed separate \$396.46 underpayment of child support that occurred in other months, the hearing officer finds nothing in the regulations relative to the disposition of either "overpayments" or "underpayments" of child support by OCSE to a custodial parent.<sup>(6)</sup> The hearing officer rejects, however, the argument implicit in the petitioner's memoranda that an "entitlement" to erroneously paid child support collections is created whenever the statutes and regulations fail to contemplate and address a situation in which an erroneous payment of those funds can occur.

During the time in question the petitioner had assigned her rights to child support to DSW. See W.A.M. § 2331.31. As noted above, the regulations clearly provide that an ANFC recipient is to be paid only the amount of child support collected in a month that exceeds her ANFC grant for that month. See W.A.M. § 2331.36. In the absence of a specific regulation, common sense and fairness dictate that when past overpayments and underpayments by OCSE to a household of legally assigned child support are found to exist, the amounts should be offsetting.

In this case there is no dispute that the overpayment of child support the petitioner received in June, 1993, was more than the total amount of underpayments the parties later agreed had occurred in other months. Even with OCSE's "offset", the petitioner has still received all the ANFC and \$270 more in child support than she would have had no error occurred in her case. Under these circumstances the board concludes that there is no basis in law or equity requiring OCSE at this time to pay the petitioner more than it already has.

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1. The parties have agreed to continue for further investigation and negotiation a separate issue regarding the petitioner's food stamps.
2. The parties admit that DSW should have made this decision as soon as OCSE began collecting child support that was in excess of the petitioner's ANFC grant (February, 1993).
3. Under the regulations OCSE should have only paid the petitioner the difference between the child support it collected on her behalf that month and the amount the petitioner received in ANFC.
4. Under the regulations an increase in income received by an ANFC household results in the reduction or termination of ANFC to that household beginning (at the earliest) with the next benefit month. WAM § 2220.
5. In light of this decision, however, Department of Social Welfare no longer has a legal basis to "recoup" any ANFC benefits from the petitioner.
6. None of the law cited by the parties is on point. The regulations cited by OCSE and DSW (45 C.F.R. § 302.51) pertain only to "reimbursements" owed by the absent parent to the State. The statutes and regulations cited by the petitioner refer only to overpayments by an absent parent's employer (33 V.S.A. § 4104 and 15 V.S.A. § 786) or to ANFC overpayments (WAM § 2234.2).