

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,806

)

Appeal of)

)

INTRODUCTION

The petitioner appeals an action of the Office of Child Support Enforcement (OCSE) intercepting both his federal and state tax returns to offset arrearages owed for delinquent child support.

FINDINGS OF FACT

- 1. The petitioner is the father of two minor children who live with his ex-wife and who are supported through the Aid to Needy Families with Children program.
- 2. On July 21, 1993, the Vermont Family Court entered a support order against the petitioner requiring him to provide current support of \$50.00 per month for his two children. That same order entered a judgment for past due child support in favor of the Office of Child Support in the amount of \$208.22 as of June 30, 1993. The order further stated that:
 - 6. (C) No scheduled monthly arrears payments until or if the obligor regains custody of A. and J. L. Should that occur the arrears contained herein shall be paid via wage withholding at the rate of \$12.50 per month in addition to the current support obligation.

After the magistrate's signature, a form notice appears on the order which states, in pertinent part:

This is a Court Order.

All parties are expected to comply with the terms of the order for as long as it is in effect.

...

If the Office of Child Support is or becomes involved in this case, based either on a current or future request for their services, or otherwise, the Office has the ability to take the following steps:

- The Office of Child Support may use any lawful collection remedies to collect any outstanding balance from the Obligor.

- The Office of Child Support may annually certify all qualifying child support debts to the Vermont Tax Department and/or the Internal Revenue Service for the purpose of tax offset.

- The Office of Child Support may report an Obligor's delinquent account balance to consumer credit reporting agencies.

3. Subsequent to this agreement, the Department contends, but did not prove, that the petitioner failed to pay as ordered and has increased his arrearage beyond that set forth in the order. The petitioner contends that he did not fail to make such payments.

4. Sometime during the last year, the Department certified to both the federal IRS and the state tax division that the petitioner owed a valid child support debt to the Department in the amount of \$208.22. Pursuant to that certification, tax returns owed to the petitioner in the amount of \$208.22 each were intercepted by both those Departments and paid over to the OCSE for a total of \$416.44. At the hearing, the Department agreed that they had intercepted double the amount certified and represented that \$208.22 would be returned to the petitioner immediately. The Department contends, however, that it had the power, right and authority to intercept \$208.22.

5. The petitioner does not dispute the validity or the amount of the arrearage debt. He claims, rather, that OCSE does not have the authority to collect the arrearage except as provided in paragraph 6 (C) set forth above. It is his contention that the arrearage can only be collected if his two children are returned to his custody.

ORDER

The decision of the Office of Child Support Enforcement is affirmed.

REASONS

Under both federal and state law, the Office of Child Support Enforcement has been given the authority to collect child support debts owed to it or persons it represents through a variety of mechanisms, including the interception and offset of state and federal tax returns. See 42 U.S.C. § 664, 45 C.F.R. § 303.72, and 33 V.S.A. § 5933. This set off is an administrative, rather than judicial, remedy for collection and is "in addition to and not in substitution for any other remedy available by law." 33 V.S.A. § 5933 (a) and Guthmiller v. North Dakota Department of Human Services, 421 N.W.2d 469 (N.D. 1988).

Under both state and federal law, OCSE clearly has the authority to collect support debts owed to it through this administrative remedy. The petitioner claims, however, that the Court has effectively prohibited OCSE from employing such a remedy by making a Court order which supersedes that right and which specifies in Paragraph 6(c) (set forth above) the only method for collection of arrearages.

There is nothing in the language of the Court order which prohibits OCSE from employing administrative collection remedies for arrearages. The Court order merely sets up restrictions on

collection of arrearages through judicial wage attachments. Furthermore, the order issued by the Court specifically notifies the petitioner that OCSE has other remedies for the collection of support which it may choose to use, including tax offset. It cannot be concluded, therefore, that OCSE has violated the Court order in its attempt to collect the arrearage owed by the petitioner.

#