

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,936

)

Appeal of )

)

INTRODUCTION

The Office of Child Support Enforcement (OCSE) has moved to dismiss the petitioner's request for fair hearing.

DISCUSSION

The petitioner requested a fair hearing in this matter on June 30, 1994 seeking an order against OCSE to continue to collect child support on behalf of her sixteen-year-old daughter and for "restitution" from OCSE of child support that OCSE had previously collected but had returned to the absent father because the petitioner's daughter was no longer living with the petitioner.

Following a hearing on August 1, 1994, at which OCSE failed to appear the petitioner filed a Motion for a Default Judgement. This motion was denied when it was determined that OCSE had not received its notice of the hearing.

Another hearing was held on October 3, 1994, at which time the petitioner and her daughter appeared represented by an attorney from Vermont Legal Aid. The matter was continued by Legal Aid to determine whether it could continue to represent both the petitioner and her daughter, and for the parties to attempt to negotiate a settlement.

On November 22, 1994, the petitioner's attorney sent the following letter to the hearing officer:

You couldn't have made this one up! Tom Devine and I had the outline of a settlement all worked out: OCS was agreeing to pay my clients the entire \$2600.00 they should have received, and the proceed to enforce current support obligations of both parents. My clients and I had worked out a mutually acceptable method of distributing the settlement for [daughter's] needs, and I had notified Tom Devine to make out the check to "Vermont Legal Aid, as attorney for [petitioner]." Without notice to me (or even a cover letter to accompany it, apparently) Tom's agency sent a check for \$2600 to [petitioner]. This caused a split in interests between my two clients, with the result that I cannot continue to represent either of them.

Legal Aid's Volunteer Lawyer Project is attempting to obtain independent counsel for [daughter]; they are not guaranteed of success. I have notified [petitioner] that I must withdraw from representing her as well. Please consider this Legal Aid's motion to withdraw as counsel in this matter, and advise me of your action. Thank you.

The hearing officer conducted a conference call with the attorneys on December 9, 1994, at which time VLA was granted leave to withdraw. The matter was then continued to allow OCSE to negotiate directly with the petitioner and her daughter.

On December 27, 1994, OCSE filed a Motion to Dismiss the matter because of mootness, in that it has paid the petitioner all the money she had requested. A hearing on this motion was scheduled on January 9, 1995.

The petitioner did not appear at the hearing. However, her daughter appeared and advised OCSE and the hearing officer that the petitioner had not turned any child support money over to her even though she was no longer living with the petitioner.

At this time, however, it seems clear that OCSE's (and the board's) hands are tied by the current child support order that specifies that the petitioner is the payee of child support for her daughter. Furthermore, the board's jurisdiction in this matter is limited to the petitioner's appeal of OCSE's failure to pay her child support it had collected from the absent parent. It is clear that the petitioner has obtained everything she sought in her original request for hearing. Unless and until the petitioner's daughter is successful in modifying the child support order, the daughter has no standing to request the OCSE send the child support payments to her instead of to the petitioner.<sup>(1)</sup>

#### ORDER

OCSE's Motion to Dismiss the petitioner's appeal is granted on the basis of mootness. The appeal of the petitioner's daughter is dismissed for lack of standing.

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1. OCSE and the hearing officer advised the daughter to file a motion in Family Court to modify the current child support order that specifies that her mother (the petitioner) is the payee of her child support.