

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,943

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Office of Child Support finding that he is not entitled to a return of his child support payments made when his eighteen-year-old daughter was enrolled in but not attending high school regularly.

FINDINGS OF FACT

1. Under an order of the Franklin Family Court dated August 11, 1994, the petitioner was obligated to pay \$69.42 per week (\$300.82 per month) to his ex-wife, S.R., for the support of his daughter, E.B., who was in her physical custody and was about to enter the eleventh grade. The order further provided that "unless otherwise specified, an Obligor's support obligation will continue beyond a child's eighteenth birthday if the child is enrolled in, but has not completed high school." No alternative specification for support was made in the order.
2. Under the terms of the Court order, child support was to be paid through the Office of Child Support, Support Registry. At the time of the Court order, the petitioner's ex-wife was receiving ANFC and had assigned her support rights to the Department which continued to collect under that order through October 31, 1994. Following that date, the Office of Child Support was acting as a collection and disbursement agent for support paid by the petitioner. At no time after August 31, 1994, was the petitioner's ex-wife a recipient of public assistance and no funds collected by the Department were disbursed to anyone other than S.R.
3. The petitioner's daughter turned eighteen on June 19, 1995 but continued to be enrolled in high school as she had a year left before graduation. The petitioner continued to pay as ordered by the court through November of 1995, and had no arrearages up to that point. However, during that fall, the petitioner became aware that his daughter was rarely attending school and called the Office of Child Support to ask if he needed to continue to pay. He presented a copy of E.R.'s attendance report to support his contention that she was rarely attending school.
4. A worker at OCS responded in a letter dated January 8, 1996, as follows:

I have reviewed your case with my supervisor and even though [E.B.] is not attending school she is still enrolled. This comes down to a technical interpretation of the law. What we will need to close the case is a statement from the school stating [E.B.] is no longer a student. At this point we will close your case and credit your account back to June of last year when [E.B.] returned [sic] 18. As soon as you have this information you can mail it to me and I will see it through. I have put the information on [E.B.'s] attendance record at school into your file. If I can be of any further help to you please feel free to give me a call.

5. The petitioner could not get a statement from the school that E.B. was no longer enrolled because she was still officially enrolled. However, he made no further child support payments. The Department was able to obtain information from the school that E.B. did withdraw and was no longer enrolled at the high school as of February 2, 1996. The petitioner does not dispute that February 2, 1996 was the actual date that she was no longer enrolled in school.

6. The records of the Department showed that the petitioner had \$208.26 unpaid child support due for the balance of the 1995 year and that he did not pay \$300.82 for January of 1996, nor the \$20.74 owed for the two days in February of 1996. (This was figured by using a \$10.37 per day figure, arrived at by dividing \$300.82 per month by the number of days in February.) In addition, the Department's records showed that the petitioner had \$46.28 in arrearages owed to the Department from September 1, 1994, the effective date of the order, through October 31, 1994, when the petitioner's ex-wife went off ANFC. The total of unpaid child support from September 1, 1994 through February 2, 1996 was \$617, of which \$576.10 was owed to the petitioner's ex-wife and \$46.28 to the Department of Social Welfare.

7. The Department attempted to collect the above amount from the petitioner who continued to refuse to pay and who asked for an administrative review. The petitioner did not dispute the calculations made by the Department with regard to the February 2, 1996 termination date but argued that the actual termination date should have been June 18, 1995, when his daughter turned eighteen. His position was rejected after the administrative review and a written notice informed him that the supervisor at OCS took the position, contrary to that of the worker, that the Court order required the payment of support until February 2, 1996, the last day his child was enrolled in high school and that no refund could be made back to the eighteenth birthday. OCS thereafter certified a \$617 debt to the IRS and Vermont Tax Office for tax offset for the tax filing year 1996. That amount was actually collected from his back taxes.

8. At the Human Services Board hearing, the petitioner did not dispute the payment of the \$46.28 arrearage to the Department from 1994. Rather he disputed the assessment of any child support against him following June 18, 1995, and requested not only the return of the \$576.10 collected through tax withholding but also the balance of the payments he made since that time, about \$1,600 more. He does not dispute that the \$576.10 was paid over to his ex-wife, S.R. He relied upon the original letter sent by the OCS worker in January of 1996 as authority for a refund to him of the entire amount back to June 18, 1995.

ORDER

The decision of the Department is affirmed.

REASONS

The expressed terms of the Court order are the touchstone for the amount of child support to be

collected. The order, as set forth above, clearly states that the support obligation extends beyond the child's eighteenth birthday "if the child is enrolled in, but has not completed high school." (Emphasis supplied.) The undisputed and relevant fact of the matter herein is that the child was enrolled in high school until February 2, 1996. The fact that her attendance was poor or that she did not ultimately complete high school is not relevant under that provision. The Department collected unpaid child support owed for that period of time when the child was actually enrolled in high school. The fact that the petitioner was told that he could get a refund from a worker does not change the law and the petitioner has not shown that he has suffered any detriment from that misinformation. That misinterpretation of the law was corrected by the supervisor at the administrative review. As the decision of the Department is correct, it must be upheld. 3 V.S.A. § 3091(d).

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