

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,352
)
Appeal of)

INTRODUCTION

The petitioner appeals an administrative review decision by the Office of Child Support (OCS) with regard to the collection and disbursement of child support paid by him to the assisted (custodial) parent.

FINDINGS OF FACT

1. The petitioner is the father of two children who were the subject of a February 2000 Vermont Court order with respect to custody and support. The order placed physical custody of the children with their mother and ordered the petitioner to pay \$200 per month which was increased to \$474 per month on May 1, 2000. The order also established a \$540 arrearage payment as of January 31, 2000.

2. The petitioner, who lives in Massachusetts, was required to make the support payments to the Vermont Office of Child Support (through a URESA petition administered by the Massachusetts office of child support) which disbursed them to the children's mother and at some point to the Department of

Social Welfare which had an assignment of her support rights when the children received assistance benefits in Vermont.

The support payments were initially collected through payroll deduction.

3. On May 1, 2001, the two children were placed by their mother in the care of the petitioner's parents with whom he lives. The children's mother said she did not want the support any longer and that she would notify OCS of the change. It is not clear if she ever notified OCS of this change. After a few months she moved to another state. Wage withholding under the Vermont order still continued to be paid to OCS. OCS paid out all of that money either to the children's mother or to the Department of PATH which had an assignment of her right to support during her receipt of welfare.¹

4. In January or February of 2002, the petitioner filed a motion with the Vermont court to stop his child support

¹ At the petitioner's request, OCS supplied him with a copy of its ledger record showing that all of the checks were disbursed to either the Department of Social Welfare, his children's mother or to himself. The petitioner continues to insist on seeing copies of all the cancelled checks disbursed. He has presented absolutely no reason to suspect that these checks were not mailed as the OCS record has said. At his request, the hearing officer did ask OCS to supply him with a copy of the large tax intercept check that was disbursed to the children's mother. Although OCS complied and was able to show that a check in the appropriate amount was sent to the children's mother and cashed, the petitioner continues, without any demonstrated reason, to believe that the checks were not sent. The evidence presented by OCS is to the contrary.

obligation and to officially change custody. The petitioner told the court that he did not know where the children's mother was and was advised that he had to notify her of his motion through publication in a local paper. The petitioner determined that publication was too expensive and was never able to accomplish service with regard to his motion. Absent publication, the court declined to officially change custody or to modify the child support amount because it lacked jurisdiction. However, the court did stop the automatic wage withholding as of January 23, 2002.

5. Because there was still a valid Vermont support order which was unpaid after the wage withholding stopped, OCS initiated actions to collect the arrearage during 2002 by other methods, including intercepting tax returns due to the petitioner. OCS intercepted \$355.79 from the state tax return on August 5, 2002 and \$4,460 from the federal tax return on October 18, 2002, both of which were paid to the children's mother within days of their receipt. At the time these interceptions were initiated the petitioner was several thousand dollars behind in payments on the unmodified Vermont support order.

6. In October of 2002, the petitioner filed a motion in a Massachusetts court to stop the child support and to return

custody to him. The children's mother, who reported in an affidavit dated June 27, 2002 that she still lived in Vermont, agreed to the court's jurisdiction and to the retroactive modification of the Vermont court order. The Massachusetts court took jurisdiction over the matter. OCS was not made a part of the action and received no official notification of its existence although the petitioner told OCS workers that he was trying to get a new order in Massachusetts.

7. On October 21, 2002, OCS disbursed the tax intercept money received three days earlier to the children's mother in payment of arrearages owed by the petitioner pursuant to the Vermont order in the amount of \$4,460.00.

8. On November 5, 2002, the Massachusetts court issued a "temporary order" granting legal and physical custody to the petitioner and suspending his support obligation back to May of 2001. Upon receipt of this order, OCS took the petitioner "off-line" and made no further attempts to calculate new arrearages or to collect under the Vermont order. On December 20, 2002, the Massachusetts court issued another order terminating the order for support of the minor children. Neither of these orders was served on the Vermont court at that time.

9. The petitioner appealed to OCS following this Massachusetts order to return all of the money that had been paid since May 1, 2001. After reviewing its records, OCS discovered that there was some \$3,100 in the children's mother's account which had not yet been paid out² and returned that amount to the petitioner. Following an administrative review hearing, OCS concluded in a decision dated February 4, 2003 that \$7,583.98 should be credited to the petitioner for payments after May 1, 2001 based on the Vermont court's order.³ However, only the \$3,100 could be returned to the petitioner because all the rest had been disbursed to the custodial parent. The finding of the OCS reviewer was that the amounts had been correctly paid out because they were done so pursuant to the Vermont Court order. The reviewer suggested to the petitioner that he resolve the matter of the two conflicting orders by returning to the Vermont court for a

² This \$3,100 appears to have come from the return of some child support money collected by PATH while the children's mother was on RUFA benefits which was in excess of amounts actually owed to PATH.

³ The term "credited" seems to have caused some confusion. A review of the records shows that OCS used that term to show what money the petitioner was credited with paying over to OCS. The petitioner apparently believes that term means that he has paid in excess of what is owed and has a credit with OCS for that amount. This confusion appears to be a large part of the basis of this appeal. The records shows that the petitioner did not pay in excess of the amounts ordered by the Vermont court but rather was considerably behind until such time as the Massachusetts and Vermont courts finally wiped out the back debt owed.

declaration of which order was controlling in order to prevent a future arrearage from accruing.

10. On March 10, 2003, the petitioner made a motion to determine the controlling order with the Vermont court. On April 9, 2003, the Vermont court issued an order saying that the Massachusetts orders issued in November and December of 2002 superseded Vermont's original order dated February 9, 2000 because both parties had agreed to jurisdiction in Massachusetts and because that state was presently the home of the children.

11. The petitioner believes that OCS is holding money that it has received from him and refuses to pay it out. OCS supplied the petitioner with an accounting showing that all amounts had been disbursed to either the Department of Social Welfare, the children's mother or to him and that nothing remained in the account. The petitioner continued to take issue with the disbursement of the federal tax intercept and upon the order of the hearing officer, OCS produced a photocopy of a \$4,400 check issued to the children's mother on October 21, 2002 that had been endorsed and cashed by the

mother on November 4, 2002.⁴ It must be found based on the above facts that OCS has no further funds in the mother's account which could be returned to the petitioner and that all funds not returned to the petitioner were duly paid over to the mother prior to the Massachusetts court order issued on November 5, 2002.

ORDER

The decision of the Office of Child Support is affirmed.

REASONS

There is no question that Vermont issued an order requiring the petitioner to pay child support to the children's mother in February of 2000 which remained unmodified until at least November 5, 2002 when the Massachusetts court acted on the support matter. The petitioner contends that the Vermont order was superseded on that day. OCS takes the position that this order remained in effect until at least April 9, 2003, when the Vermont court itself vacated the order and decreed that the Massachusetts order superseded its order.

The petitioner claims that the signature on the check is a forgery. However, that is a matter for the children's mother to pursue with her local police department.

It is not necessary to determine which is the case in this matter, a fortunate occurrence as this Board lacks the jurisdiction to decide the validity of conflicting court orders. This determination is not necessary because OCS collected and disbursed all the money under the original court order before any other order of any other state came into play. OCS is correct that it acted appropriately under the only court order in effect to establish arrearages owed by the petitioner. See 33 V.S.A. § 4103(1) and (2). Although the petitioner feels it is unjust that arrearages were accruing against him, the fact remains that they had accrued and that they had worsened considerably when his wage withholding stopped in early 2002. Since those arrearages were well in excess of \$500, OCS was justified under the federal regulations to initiate tax intercept procedures in mid-2002 to collect on the arrearages. 45 C.F.R. § 303.72 (a)(3)(iii).

The records of OCS show that all amounts collected were as authorized by the Vermont court and duly disbursed to either PATH as a third party with assigned rights or to the children's mother prior to November 5, 2002, the date of the Massachusetts order. The only amount remaining in the account after the date of the Massachusetts order was \$3,101.60 which was paid over to the petitioner. While it is true that both

Massachusetts (in November of 2002) and Vermont (in April of 2003) extinguished the petitioner's support retroactive to May 1, 2001, by the time the first court acted all the support amounts which had been collected had been paid out. Vermont OCS has no obligation to repay to the petitioner amounts which were validly paid out at the time of disbursement but which were later retroactively extinguished. The petitioner may have some right of action against those third parties who received the payments from May 1, 2001 through October 21, 2002 (particularly the children's mother who appears to have cashed the \$4,400 check in November of 2002 after she filed a written agreement with the Massachusetts court on June 27, 2002 to retroactively extinguish the support!) but not against OCS.

There is no doubt that the petitioner was actually supporting his children since May 1, 2001 as the Courts have retroactively modified his obligation, no doubt to avoid the establishment of any arrearage. However, OCS is bound to act according to court order and the petitioner's failure to change that court order to reflect reality for well over a year was the source of the continued collections and disbursements, not any malfeasance on the part of OCS. OCS' only obligation to the petitioner here is to provide him with

a record of the collections and disbursements which it has effectuated pursuant to the then existing court order. 33 VSA § 4103(3). As OCS' decision in this matter is correct, it should be affirmed by the Board. 3 V.S.A. § 3091(d).

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