

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 18,479
)
Appeal of)

INTRODUCTION

The petitioner appeals an "Administrative Review Decision" of the Office of Child Support Enforcement (OCS). The preliminary issue is whether the petitioner's grievance is properly before the Human Services Board and whether the Board has jurisdiction to consider it.

DISCUSSION

The petitioner is a resident of the state of New Jersey. He has participated in two telephone status conferences in this matter with the OCS attorney and this hearing officer. The following facts are not in dispute.

The petitioner and his ex-wife were divorced in Vermont about ten years ago. The petitioner's ex-wife is still a resident of Vermont. Under the terms of their original decree the petitioner was ordered to pay \$66.97 per week in child support.

The petitioner maintains that about eight years ago a court in New Jersey, acting pursuant to an interstate action

for support collection filed by OCS in Vermont, reduced his support obligation to \$50 per week. The instant appeal arose when the petitioner was notified that OCS was seeking an order in Vermont Family Court seeking enforcement and the collection of alleged arrearages stemming from the original decree of \$66.97 per week. During an OCS Administrative Review held on February 12, 2003, the petitioner agreed that OCS would seek a ruling in Vermont Family Court as to which child support order was controlling in the determination of the amount, if any, of child support arrearages owed by the petitioner.

On April 9, 2003 a Vermont Family Court magistrate ruled that the original decree (\$66.97 per week) was controlling. The petitioner claims he did not get notice of this hearing and was not given the opportunity to present his case to that court. At the first status conference held in the instant matter (on June 30, 2003) the parties agreed to a continuance to allow the petitioner to file a Motion to Reopen the recent Family Court decision.

At the second status conference held in the instant matter (on July 28, 2003) the petitioner represented that the Family Court magistrate, in a ruling dated July 14, 2003, had denied his motion to reopen. The hearing officer and OCS advised the petitioner of his right to appeal the magistrate's

order, but the hearing officer explained that he would recommend that the matter be dismissed by the Human Service Board for lack of subject matter jurisdiction.

ORDER

The petitioner's appeal is dismissed because the Board lacks subject matter jurisdiction to hear it.

REASONS

Several statutes govern child support establishment and collection in the state of Vermont. See 15 V.S.A. Chapter 11. The Board has repeatedly held that under those statutes all grievances regarding the establishment of an amount of child support and the methods used to collect it are exclusive matters for the court that has jurisdiction to establish and enforce child support orders. See, e.g., Fair Hearing No. 17,895.

The Board has also held that it has jurisdiction over OCS administrative decisions only in very limited cases. See, e.g., Fair Hearing Nos. 18,268 and 16,055. These cases are mainly limited to the jurisdictional mandate found in the statute governing Board decisions, which reads, in pertinent part, as follows:

An applicant for or a recipient of assistance, benefits or social services from . . . the office of child support . . . may file a request for a hearing with the human services board. An opportunity for a hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his . . . receipt of assistance, benefits, or services . . . or because the individual is aggrieved by agency policy as it affects his or her situation.

3 V.S.A. 3091(d)

OCS's own regulations describe appeals to the Human Services Board as "general grievances", and give as examples a delay or failure to receive a support allocation or an improper distribution of support to recipients of OCS services. See OCS Regulations 2802 and 2802A.

Even if the petitioner is correct that the New Jersey court order is controlling, at this point this is an issue that can only be considered and resolved by the court with subject matter jurisdiction over the underlying action. The Board cannot obtain jurisdiction of any claim when it has been considered (and, at least for the time being, resolved) by the court with jurisdiction over the matter from which the present claim arises. To do so would be plainly inconsistent with the federal Uniform Interstate Family Support Act. See 15B V.S.A. §§ 101 et seq. Inasmuch as consideration of the petitioner's

grievance against OCS in this matter lies exclusively with the court that issued the underlying support decree (i.e., Vermont Family Court), it must be dismissed.

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