STATE OF VERMONT

HUMAN SERVICES BOARD

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| In re | ) | Fair Hearing No. 18,733 |
| | ) | |
| Appeal of | ) | |

## INTRODUCTION

The petitioner appeals a decision of the Office of Child Support (OCS) to pay amounts intercepted from the petitioner's ex-husband's tax return to the State of Vermont for arrearages owed while she was on public benefits rather than to arrearages owed to herself.

## FINDINGS OF FACT

1. The petitioner and her child do not currently receive public assistance. The petitioner has an order of support dated November 4, 2002 from a Vermont family court which establishes child support arrearages as of June 30, 2002 both for herself in the amount of $5,637.91 and for the state of Vermont for $2,197.52. The arrearages to the state accrued during periods of time in the past when the petitioner received financial support through the state ANFC program. Her ex-husband was ordered by the Court to make arrearage payments to the petitioner of $97.50 per month. The order states that after all arrearages are paid in full to the

petitioner, her ex-husband should start making the arrearage payments to the state. His payments are made through wage withholding.

2. On October 8, 2003, OCS intercepted a tax refund owed to the petitioner's ex-husband in the amount of $885.00. That tax refund was sent to the State in satisfaction of its arrearages, and was not sent to the petitioner.

3. The petitioner appealed the distribution of this intercepted tax refund to the State instead of to her. She had an internal administrative hearing at OCS on the matter in September of 2003 which concluded with the opinion that OCS had acted properly.

4. The petitioner appealed that decision to the Board saying that it is in conflict with the court's order.

## ORDER

The decision of OCS is affirmed.

## REASONS

The collection and distribution of child support payments by OCS is an area that is subject to federal regulation due to the receipt by OCS of federal program funds. See generally 33 V.S.A. § 3904, Title IV of the Social Security Act, 42 U.S.C. §§ 602-679a. The general rule of collection and distribution

is that all funds paid towards an arrearage are paid first to the family, if the family is no longer receiving public assistance. 42 U.S.C. § 657(a)(2)(B)(i)(II)(aa). There is an exception to this rule found in the federal regulation that says when past due support is collected from the obligor via a tax refund interception, it must be applied to state arrearages. 42 U.S.C. § 657(a)(2)(B)(iv), 45 C.F.R. 302.36, 302.51(a)(3), and 303.72(h).

State courts in federal program participating jurisdictions do not have the discretion under these federal regulations to change the statutory order of distribution of support collections. See, e.g. Department of Human Services v. Glasby, 858 P.2d 1291 (1993). OCS argues that the petitioner's court order is not inconsistent with the statutory order of distribution because it makes no mention whatsoever as to how intercepted tax funds are to be applied, although it does mention that such a remedy may be available to OCS. The order only says that the ex-husband must pay $97.50 per month to the petitioner through wage withholding until the arrearage is paid in full at which time he begins making monthly payments to the state.

The petitioner claims for her part that OCS is not bound by these regulations and that the court order should be

interpreted as saying that all funds collected by any method are turned over to her. There is a good deal of sympathy and common sense[1] in what the petitioner says but, contrary to her assertion, OCS is bound by the federal statutory and regulatory rules and is indeed required to apply intercepted tax returns to state arrearages.

As OCS has pointed out, there is nothing in the language of the court order which contradicts the statutory scheme and to interpret the order as the petitioner suggests would place it squarely in conflict with federal distribution rules. It is certainly better practice to interpret the Court's order as consistent with federal collection and distribution laws and to uphold the decision of OCS in this matter. If the petitioner truly feels that the court did not intend that tax return intercepts go to the state, she can ask for a specific clarification from the court but it is doubtful based on the federal court ruling cited above that the Vermont family court

[1] Child advocacy groups such as the Center for Law and Social Policy have criticized this law and are working for its reformation in Congress.

can make an order requiring distribution of tax offsets to the petitioner in conflict with federal distribution law.

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