

## STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County <b>MONTGOMERY</b>	District Hearings Section <b>COLUMBUS</b>	Assistance Group Name		Assistance Group Number
Place of Hearing <b>MONTGOMERY</b>	Initial Hearing Date <b>11/25/2003</b>	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation <b>Anne Bissacco, Administrative Assistant</b>

Date Notice Mailed <b>10/29/2003</b>	Date Received by Local Agency	Date Received by ODHS <b>11/05/2003</b>	Date Appeal Summary Received	Date Scheduling Notice Mailed <b>11/14/2003</b>
Appeal Number(s)/Program(s) <b>1146558/IVD</b>				

### Notice to Appellant

This is the official report of your hearing and is to inform you of the decision and order in your case. All papers and materials introduced at the hearing or otherwise filed in the proceeding make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services. If you would like a copy of the official record, please telephone the Bureau of State Hearings at 1-866-ODJFS-4-U (1-866-635-3748); and choose option number 1 from the main menu.

**If you believe this state hearing decision is wrong, you may request an administrative appeal by writing to: Ohio Department of Job and Family Services, Office of Legal Services, 30 East Broad Street, 31st Floor, Columbus, Ohio 43215-3414 or FAX (614) 728-9574.** Your request should include a copy of this hearing decision and an explanation of why you think it is wrong. Your written request must be received by the Office of Legal Services within 15 calendar days from the date this decision is issued. *(If the 15th day falls on a weekend or holiday, this deadline is extended to the next work day.)* During the 15-day administrative appeal period you may request a free copy of the tape recording of the hearing by contacting the district hearings section.

If you want information on free legal services but don't know the number of your local legal aid office, you can call the Ohio State Legal Services Association, toll free, at 1-800-589-5888, for the local number.

### ISSUE SECTION

**Appeal No. 1146558 Child Support (IV-D):** On 10/29/03, the county child support enforcement agency (CSEA) mailed the appellant a denial of his request for an administrative adjustment review. The denial letter stated that the Appellant failed to provide verification of a significant change in his income. The Appellant submitted evidence that, since a period of unemployment earlier in the summer of 2003, he has only found part-time work. The Agency was failed to produce any information regarding the salary figures used to determine the current child support order. It was therefore not possible to determine whether the Appellant's income for the past six-month period represented a decline of thirty percent. In the absence of evidence from the CSEA, the Agency's denial is found to be incorrect.

### PROCEDURAL MATTERS

This appeal was received by the Bureau of State Hearings on 11/5/03. The hearing was scheduled to be held

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Appeal(s) <b>SUSTAINED 1146558</b>	Date Issued <b>01/13/2004</b>	Compliance <b>1146558</b>
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**Distribution:** Original to appellant, one copy to local agency; one copy to district Hearing section; one copy to district office; two copies to State Hearings. *(Photocopy to appellant's authorized representative, if any, and to ODHS units as appropriate.)*

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at the local county department of job and family services on 11/25/03 and was duly conducted on that date. The Appellant attended the hearing and represented himself. He was accompanied by his wife. The CSEA was represented by an Administrative Assistant who participated by telephone conference call. The Hearing Officer conducted the proceeding by speaker telephone from the offices of the Columbus Regional Hearings Unit. All participants were sworn in by the hearing officer. Testimony was taken and documents were accepted and identified as Exhibits. The hearing record was left open until 12/2/03 to permit the Appellant to obtain additional payroll records and for the CSEA to provide the computations used in determining the current order. Based on the evidence presented, the Hearing Officer made the following findings of fact.

### **FINDINGS OF FACT**

- (1) The Appellant has multiple child support cases. The case under appeal has a support order for \$200.04 per month.
- (2) The Appellant's child support order is not due for a three-year review until 7/8/06.
- (3) On 10/15/03, the Appellant requested an administrative review of his child support order due to a decrease in income.
- (4) On 10/29/03, the CSEA denied the Appellant's request because it included no verification to indicate a substantial change in either party's income, sufficient to warrant a review.
- (5) The Appellant has worked at his current job since August of 2003. Prior to that he was unemployed for six weeks.
- (6) The Appellant works part-time. He earns \$7.50 per hour and is paid biweekly. The Appellant works an average of 54 hours per pay period, or about 27 hours per week, 116 hours per month. During the period September 2003 through November 2003, the Appellant made a gross average of \$827.32 per month.
- (7) The Appellant sustained a back injury in November of 2003. The seriousness of the injury has not been determined.

### **CONCLUSIONS OF POLICY**

#### **Policy**

- (1) Ohio Administrative Code (OAC) 5101:6-3-01, "Grounds for requesting a state hearing," states in paragraph (C) that the grounds for requesting a state hearing in the child support program by the noncustodial parent are limited to the following: Services for establishing paternity have been denied; The CSEA has

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refused to review the noncustodial parent's support order for modification; The noncustodial parent disagrees with the results of an investigation concerning termination of a support order.

(2) OAC 5101:1-30-403, "Review and adjustment of IV-D court and administrative child support orders," states in division (C) that the CSEA shall respond to all requests for a review of each IV-D order under its jurisdiction and, within fifteen days of receipt of a request for a review, shall determine whether a review should be conducted and notify each party of a scheduled review or notify the petitioner that a review is not warranted and the reasons for that determination

(3) Child Support Enforcement Manual (CSEM) section 2400, "Review and Adjustment of IV-D Court and Administrative Child Support Orders," governs the adjustment and modification of administrative child support orders and the CSEA's role in applying to the court for review and modification of court-ordered child support. Subsection 2402, "Frequency and Conditions of Reviews" discusses the time frames for review of child support orders and in part (D) lists 8 circumstances which justify a review before the standard 36 month review period; those circumstances are as follow: 1) A minimum amount of support is ordered due to the unemployment or underemployment of the obligor and information has been received to the effect that obligor is now employed or employed in more remunerative employment; 2) Either party has experienced a loss of employment for a period of at least six months which is beyond his or her control; 3) Either party become disabled; 4) Institutionalization or incarceration without opportunity for parole for the duration of the child's minority; 5) Either party has experienced a thirty percent change, which is beyond his or her control, in gross income for at least six months; 6) One or more of the children in the order have been deleted due to emancipation or some other reason; 7) The opportunity exists to access health insurance or improved health insurance for the children; 8) The current order was established as a rebuttal of the guideline amount and the petitioner can show a change in the circumstance which resulted in the rebuttal to the guideline amount.

(4)OAC 5101:6-7-01, "State hearing decisions," states in paragraph (C) (1), "Basis," that "The hearing officer's findings of fact shall be based exclusively on the evidence introduced at the hearing, or after the hearing and subject to examination and rebuttal by both parties as described in rule 5101:6-6-02 of the Administrative Code." Paragraph (C) (1) (c) states that "It shall be the responsibility of the agency to show, by a preponderance of the evidence, that its action or inaction was in accordance with [ODJFS] rules."

### **Analysis**

The appellant's hearing request was made in response to the CSEA's denial of his request for an administrative review of his child support order. The rule cited above in item (1) indicates that this is one of the grounds on which a non-custodial parent, or obligor, may request a state hearing. The CSEA received the appellant's request for modification on 10/15/03 and issued a denial on 10/29/03, thus meeting the time frame permitted by the rule cited above in item (2). The CSEM section cited above in item (3) describes the

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circumstances under which a review can be granted sooner than the standard three-year period. The Administrative Adjustment Review Denial Notice, Exhibit (1), indicates that the Appellant did not include any verification in support of his request. The request was therefore denied on 10/29/03.

The appellant testified that he had a back injury and is unable to lift over ten pounds. This has lowered the number of hours he is able to work. He stated that he had verification of a back injury and could show, by pay stubs which he entered into evidence, that his hours of work had been reduced after the injury, and his earnings lowered as a result. The Hearing Officer asked the CSEA representative what salary was used in arriving at the current order. The representative did not have that information available. The Hearing Officer requested a copy of the child support computation, in order to determine what salary figure was used in setting his child support amount. The CSEA did not provide any information regarding the salary figure used in the original computation. It was therefore not possible to make a clear determination as to whether the change in the Appellant's earned income amounted to thirty percent. The Administrative rule cited above in item (4), indicates that the Agency is responsible for supporting its case and that only testimony and evidence within the framework of the hearing can be considered. In the present case, there was no documentary evidence or specific testimony to weigh against the Appellant's testimony and evidence.

### **HEARING OFFICER'S RECOMMENDATIONS**

**Appeal No. 1146558 Child Support (IV-D):** Based on the record before me, I find the appeal should be sustained. As the Agency failed to support the correctness of its action through submission of documentary evidence, the preponderance of evidence is with the Appellant. The CSEA should grant the Appellant an administrative review of his child support order.

### **FINAL ADMINISTRATIVE DECISION AND ORDER**

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted. Compliance is required. OAC 5101:6-7-03 (B) (1) (a) requires compliance with decisions involving public assistance within fifteen calendar days from the date the decision is issued, but in no event later than ninety days from the date of the hearing request.

### **APPENDIX**

#### **Exhibits**

- (1) JFS 7613, Administrative Adjustment Review Denial Notice.
- (2) DHS 4067, Appeal Summary.
- (3) Pay stubs, submitted by Appellant on 11/25/03.

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(4) Payroll records, submitted by Appellant on 12/2/03.

Date Issued: 01/13/2004