

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County GREENE	District Hearings Section COLUMBUS	Assistance Group Name		Assistance Group Number
Place of Hearing GREENE CDJFS	Initial Hearing Date 12/24/2003	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Luanna Walker, Caseworker

Date Notice Mailed 12/01/2003	Date Received by Local Agency 12/01/2003	Date Received by ODHS 12/04/2003	Date Appeal Summary Received	Date Scheduling Notice Mailed 12/12/2003
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Appeal Number(s)/Program(s) 1150372/IVD

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.1150372 IV-D: The Appellant raised two issues in her hearing request. The first issue was whether the agency failed to timely act on her application for child support services. The Administrative Code provides time-frames within which child support enforcement agencies (CSEAs) are required to take enforcement action. Although the evidence presented was too incomplete to determine whether the Agency had exceeded the time frame for locate activity, the record of activity on the case does suggest an unreasonable delay in verifying location. However, as the order is now in place, there is no compliance to order. The Appellant's other issue was a request that the administrative order for child support be made retroactive to the date of the child's birth, 5/3/03. The appellant requested a state hearing when the CSEA referred her to court to file an objection to their administrative order. A review of the applicable regulations indicates that the outcome of a child support administrative hearing is appealable to a court of appropriate jurisdiction, but not to the state hearing process. The issue is therefore not appealable, and the agency's

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Appeal(s) OVERRULED 1150372	Date Issued 02/06/2004	Compliance
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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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action in referring the Appellant to the court was correct.

PROCEDURAL MATTERS

This appeal was received by the Bureau of State Hearings on 12/1/03. The hearing was scheduled to be held at the local CSEA on 12/22/03 and was duly conducted on that date. The Appellant attended the hearing and represented herself. The Appellant was accompanied by her mother, who offered testimony on her daughter's behalf. The CSEA was represented by the agency Administrator. The hearing officer conducted the proceeding by speaker telephone from the office of the Columbus Regional Hearings Unit. All parties were sworn in by the Hearing Officer. Testimony was taken and faxed documents accepted and identified as Exhibits. The record was held open until 1/5/03 for additional material to be submitted and examined by both parties. Based on this evidence, the Hearing Officer made the following findings of fact.

FINDINGS OF FACT

- (1) The Appellant made an application for child support enforcement services on 5/15/03. Her child had been born 5/3/03. The child's father signed the birth certificate.
- (2) The Appellant provided the CSEA with the address of her child's father. The non-custodial parent was in a branch of the armed service and was stationed in Mississippi. The agency mailed an address verification the same day.
- (3) No case activity was recorded until 8/14/03, when the Appellant contacted the CSEA, notifying them that the non-custodial parent was in town on leave and would be in the area for another week. The Appellant asked if a hearing could be arranged while he was in town. The Agency was not able to schedule a child support hearing within that time frame.
- (4) The non-custodial parent was transferred to another posting and left the base in Mississippi on 8/11/03.
- (5) On 8/25/03, the CSEA mailed an ODHS 7661, "Military Letter," to the base in Mississippi. There was no response to this letter.
- (6) The Appellant provided the CSEA with new address information on 9/25/03.
- (7) The CSEA received confirmation of the non-custodial parent's address in California on 9/29/03.
- (8) On 10/13/03, the Agency notified the non-custodial parent of the child support hearing date by certified mail.

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(9) The support hearing was held on 11/12/03.

(10) Support was ordered effective 11/21/03,

(11) On 11/21/03, copies of the signed administrative child support order were mailed to the parents and filed with the County Clerk of Court.

(12) On 11/24/03, the Appellant contacted the agency to object that the child support order should be retroactive to the date of the child's birth. She was informed that her objection would have to be filed in court.

CONCLUSIONS OF POLICY

Policy

(1) Ohio Administrative Code (OAC) rule 5101:6-3-01, "Grounds for requesting a state hearing," enumerates those circumstances which provide an individual with grounds for requesting a state hearing. Paragraph (B) states that the custodial parent may request a state hearing if an applicant for or recipient of child support services has a case that has been denied, acted upon erroneously, or not acted upon with reasonable promptness; if the recipient believes that the CSEA has failed to use appropriate establishment or enforcement techniques; if the custodial parent believes that child support collections have not been distributed or disbursed correctly or questions the accuracy of the arrears owed to ODJFS at the termination of cash benefits; if the custodial parent believes that support payments are not being issued with reasonable promptness; if the custodial parent believes that the CSEA has failed to take action against an employer for failure to promptly forward payments withheld from the absent parent's wages; if the custodial parent disagrees with the results of an investigation concerning termination of a support order; and if the custodial parent disagrees with the CSEA's decision to close the child support case.

(2) Child Support Enforcement (CSE) manual section 2100, "Locating The Absent Parent," defines location as finding the physical whereabouts of the absent parent, the absent parent's employer and/or other source of income and assets necessary to take the next appropriate action . . . The CSEA must access all appropriate location sources, including Federal Parent Locator Service (FPLS), within 75 days of determining that location is necessary." [OAC cite: 5101:1-30-402]

(3) CSE manual section 2004, "Timeframe for establishing a support order," states that "The CSEA must establish an order of support or serve process necessary to begin action to establish an order within 90 calendar days of locating the absent parent. Establishment of paternity is included within the 90-day timeframe. The inability of the CSEA to complete service of process, which would preclude the establishment of an order, shall be documented to show that periodic repeated efforts to serve process have

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been taken relative to the criteria defining diligent efforts described in CSEM section 2012.

(4) OAC 5101:1-32-01, "Role of the CSEA administrative officer," states in paragraph (C) that "In any administrative determination, the person(s) who is subject of the process has the right to a notice and a right to contest the administrative determination to a judicial authority within a specified time limit.'

(5) OAC 5101:6-7-01, "State Hearing Decisions," states in paragraph (C) (3) that "If it is discovered at the hearing that the request or issue meets one of the denial criteria in rule 5101:6-5-03 of the Administrative Code, the decision shall overrule the appeal on that basis."

(6) Ohio Administrative Code (OAC) rule 5101:6-5-03, "Denial and dismissal of state hearing requests," identifies the reasons for which a state hearing request may be denied or dismissed. Paragraph (C) (1) of the rule states that a hearing request may be denied if the request concerns an issue that is not appealable under the provisions of rule 5101:6-3-01 of the Administrative Code.

Analysis

The Appellant's first issue was that the CSEA had not established her child support order in a timely manner. The Administrative Code section cited above in item (1) provides that grounds for a state hearing include situations where an application for child support services has not been acted on with reasonable promptness. The Appellant therefore has an appealable issue. The CSE manual provides Federally required timeframes for the completion of certain actions on child support cases. The first timeframe deals with location activity, and as cited above in item (2) requires the agency to perform all locate activity within 75 days of determining that locate activity is required. In the Appellant's case, the Agency claimed that there was a problem verifying the non-custodial parent's address. The running record comment for 5/15/03, Exhibit (5), indicates that a locate letter was mailed by the Agency on 5/15/03, the same day the Appellant made her application. Unfortunately, there is nothing in the record to indicate what the outcome of that mailing was or what other locate efforts were made until the entry of 8/14/03 when the Appellant called the agency herself to report that the child's father was in town on leave and ask if a hearing could be scheduled within the week. The Appellant testified that the child's father left Mississippi on 8/11/03, and after a visit to Ohio, reported to a posting in California. He was in California for about ten days, the Appellant said, before he provided her with his new address. She notified the agency of the new address on in September. A postal verification was mailed to the California address on 9/25/03 and confirmation of a valid address was received on 9/29/03. The Appellant stated that she has always known the non-custodial parent's whereabouts and reported it on her initial application. When he was posted to California, the Appellant said, she notified the agency within two weeks of his arrival on the west coast.

The CSE manual section cited above in item (3) states that the CSEA has 90 days to establish an order once

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they have a verified address. The Appellant's order was signed by the Administrative Hearing Officer within sixty days of confirmation of an address. The CSEA clearly met the timeframe for establishment. Unfortunately, the record is quite unclear as regards the timeframe for location. The case record submitted into evidence has a complete absence of recorded activity between 5/15/03 and 8/14/03, a period of almost two months. The CSEA Administrator was unable to throw any light on this gap. The 75 day limit for locate activity does not begin to run until the agency determines that locate activity is necessary. In the Appellant's case, there is some question as to whether that determination was ever made. In sum, whether the CSEA exceeded the locate timeframe, there is no question that there was an extended period of inactivity on the case, one for which there is no good explanation. The Appellant's complaint in that regard is a valid one, but since the order is now established, there is no compliance that the hearing officer can order.

The Appellant stated that she felt that, if the child support order could not be made effective from the birth of the child, it should at least be effective from the date of her application for IV-D services, because she had the option of going through a private attorney and filing in court, but did not, because no one told her how long it would take through the CSEA. The Administrator testified that there did not appear to be statutory authority for the CSEA's administrative hearing officers to authorize retroactive support and suggested that issue would have to be pursued through the court. The Administrative Code section cited in item (4) does provide for an opportunity for an objection in court to any determination made in the administrative proceeding. As the non-custodial parent did file an objection on his own behalf, and a court hearing has been scheduled for 2/10/04. The Appellant will have an opportunity to raise her issue at the hearing. As regards the Appellant's request for retroactive child support, the decisions of CSEA Administrative Officers are appealable to court, not to the ODJFS state hearing process. Objections to child support administrative hearing decisions are not included in the grounds for a state hearing that are enumerated above in item (1). The rules cited in items (7) and (8) provide that when a state hearing request involves an issue which is non-appealable, it shall be overruled on that basis.

HEARING OFFICER'S RECOMMENDATIONS

Appeal No.1150372 IV-D: Based on the record before me, I find the appeal should be overruled. Although there was an unexplained period of inactivity on the Appellant's child support application, the order for support has now been established. In regard to her request for an amended order making child support retroactive prior to the Administrative Order, this is a non-appealable issue and must be pursued in a court of appropriate jurisdiction.

FINAL ADMINISTRATIVE DECISION AND ORDER

Finding the hearing officer's decision to be supported by the evidence, the recommendations above are adopted.

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Child support appeal overruled.

APPENDIX

Exhibits

- (1) ODHS 4069, State Hearing Request, with attached letter.
- (2) DHS 4067, Appeal Summary.
- (3) CSE manual section 2100, "Locating the absent parent."
- (4) CSE 2004, "Timeframe establishing a support order."
- (5) Fourteen pages of SETS (computer case record) screen-print, "Running Record Comments."
- (6) Memo submitted by CSEA, dated 12/29/03.
- (7) CSE 2305, "The administrative support order requirements."
- (8) CSE 2304, "Conducting the administrative support hearing."
- (9) CSE 2300, "CSEA support order process."
- (10) OAC 5101:1-32-03, "Administrative support order process."
- (11) OAC 5101:1-32-01, "Role of the CSEA administrative officer."
- (12) ORC 3111.13, "Judgment or order."

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