

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County CUYAHOGA	District Hearings Section CLEVELAND	Assistance Group Name		Assistance Group Number
Place of Hearing CUYAHOGA CDHS	Initial Hearing Date 01/06/2004	Rescheduled Postponed to 01/20/2004	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Pete Cleary - CSEA Program Officer

Date Notice Mailed	Date Received by Local Agency	Date Received by ODHS 12/05/2003	Date Appeal Summary Received 01/05/2004	Date Scheduling Notice Mailed 01/08/2004
Appeal Number(s)/Program(s) 1150510/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

On 12-23-03, the appellant submitted a request for a review and adjustment to the Cuyahoga County Child Support Agency (CSEA) to have her Mississippi child support order changed. The appellant is the obligor on a Mississippi child support order and is court-ordered to pay child support for her two (2) children to her ex-spouse. The appellant has physical custody of one of her two (2) children and wants the support order changed to reflect this. The CSEA has not denied the appellant's review and adjustment request, and the request is still pending a determination by the CSEA. Therefore, without a determination on the appellant's 12-23-03 review and adjustment request, the issue the appellant is appealing in not properly before the Hearing Officer and the appeal must be OVERRULED.

PROCEDURAL MATTERS

On 12-05-03, the Bureau of State Hearings received the appellant's written request for a state hearing. The appellant was scheduled for a state hearing on 01-06-04, but requested a reschedule. The appellant's

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Appeal(s) OVERRULED 1150510	Date Issued 02/10/2004	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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rescheduled hearing was conducted on 01-20-04. An Appeal Summary was received on 01-06-04.

FINDINGS OF FACT

- 1) The appellant is the obligor on a Mississippi child support order and is court-ordered to pay \$204 per month child support to her ex-spouse for support of her two (2) children. The support is being income withheld from the appellant's wages.
- 2) The appellant/obligor resides in Cuyahoga County, Ohio and her ex-spouse/obligee on the support order resides in Mississippi.
- 3) The appellant received physical custody, but not legal custody, of her 13 year old daughter, Zakeia, 2 years ago. The appellant contacted the courts and attorneys in Ohio to request that her child support order be changed so that she would no longer have to pay support for her daughter to her ex-spouse, while her daughter resided with her. The courts and attorneys advised her they did not have jurisdiction over the order and could not change her support order.
- 4) The appellant testified that she cannot afford to travel to Mississippi to have her court order changed, she cannot afford to pay an attorney \$700 to \$1000 to have this issue addressed in Mississippi, and she cannot afford to continue to pay child support to her ex-spouse for a child that is residing with her. Her ex-spouse refuses to have this custody issue addressed for her and he refuses to return the support she is paying him for the child that resides with her.
- 5) The CSEA advised that they cannot address custody issues and that the appellant would have to obtain legal custody of this child before support can be addressed.
- 6) The CSEA suggested the appellant seek a "stay of dispersal" from the court so that the support that is being paid for her daughter could be held in escrow and not be sent to her ex-spouse. This would not stop the support that is being paid for this child from being held from her wages, but would prevent the support from being sent to her ex-spouse until she obtains legal custody for her daughter and a change in the Mississippi order.
- 7) The CSEA has not denied the appellant's 12-23-03 request for review and adjustment, and the request is still pending.

CONCLUSIONS OF POLICY

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Policy**Per the Ohio Administrative Code (OAC) 5101:6-3-01 (C),**

The grounds for requesting a state hearing in the child support program by the non-custodial parent are as follows:

- (2) The CSEA has refused to review the non-custodial parent's support order for modification.

Per the Child Support Enforcement Manual (CSEM) 2400.1,

The CSEA, within fifteen days of a receipt of a request for review shall determine whether a review should be conducted in accordance with CSEM section 2402 and... notify the petitioner that a review is not warranted and the reasons thereof.

Analysis

The appellant is the obligor on a Mississippi child support order and is court-ordered to pay support to her ex-spouse for their two (2) children. The appellant resides in Cuyahoga County, Ohio and the ex-spouse, who is the obligee on the Mississippi order, resides in Mississippi. On 12-23-03, the appellant submitted a request for review and adjustment of the Mississippi child support order. Per the CSEA a determination has not been made yet on the appellant's review and adjustment request. The appellant has not received written notification from the CSEA advising as to whether her request for review is or is not warranted and the reasons thereof, in accordance with CSEM 24001.

Therefore, without a determination by the CSEA on the appellant's 12-23-03 review and adjustment request, the issue the appellant is appealing in not properly before the Hearing Officer and the appeal must be OVERRULED.

HEARING OFFICER'S RECOMMENDATIONS

Based on the record before me, I find the appeal should be OVERRULED.

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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Date Issued: 02/10/2004