

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	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Mary Kelley - Supervising Program Officer

Date Notice Mailed	Date Received by Local Agency	Date Received by ODHS 12/08/2003	Date Appeal Summary Received 01/05/2004	Date Scheduling Notice Mailed 12/24/2003
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Appeal Number(s)/Program(s) 1150875/IVD

Notice to Appellant

This is the state hearing decision in your case. All papers and materials introduced at the hearing or otherwise filed make up the hearing record. The hearing record will be maintained by the Ohio Department of Job and Family Services.

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 state why you think the hearing decision is wrong. You can complete the appeal request form included with this decision. Your written request or appeal form 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, or your representative, may request a free copy of the hearing record and recording of the hearing by calling the Bureau of State Hearings at 1-866-635-3748 (select option 1 from main menu).

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

The appellant (custodial parent mother) requested a hearing because the Cuyahoga County Child Support Enforcement Agency (agency) received child support payments from the absent parent father/APF for her child, Nicole (DOB 07-24-89), from 01-03 through 03-03 but did not disburse the payments to her. Custody and support for this child was returned to the appellant effective 01-07-03, via a court-ordered custody change. The agency received copies of the court order for the custody change and support in 02-03 and 03-03. Support payments for child/Nicole, for the period 01-03 through 03-03, were held until 11-05-03 and then were disbursed, but not to the appellant as ordered. The agency did not provide an explanation for this action. Therefore, it cannot be determined if the agency's actions were correct and the appeal should be SUSTAINED.

PROCEDURAL MATTERS

On 12-08-03, the appellant verbally requested a state hearing by calling the Bureau of State Hearings. The

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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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hearing was scheduled and conducted on 01-06-04. An Appeal Summary was received on 01-05-04.

The agency was instructed by the Hearing Officer to photo-copy the 05-05-03 Judgment Entry the appellant brought to the state hearing, after the conclusion of the hearing, and this document was to be entered as Exhibit H. The agency did not provide a copy of this Judgment Entry as instructed and this document is not part of the hearing record.

FINDINGS OF FACT

- 1) The appellant and absent parent father/Obligor were divorced. The Obligor was court-ordered to pay support for their child/Nicole (DOB 07-24-89) effective 06-07-93 under Order # D021343800 and later under SETS case #7010073604 (Exhibit B).
- 2) In 12-01, Children and Family Services removed child/Nicole, along with the appellant's other child Lisa (DOB 05-23-93), with a different father than Nicole, from the appellant's home.
- 3) In 03-02, Children and Family Services placed the children with a caretaker, Sharon B. (appellant's sister).
- 4) In 07-02, the appellant and the obligor signed papers with domestic relations court authorizing the caretaker (appellant's sister) to receive the child support payments that were being held. The held support payments were to be re-routed to the CTR under SETS #7033767984 / Order #D021343801 (Exhibit I).
- 5) In 08-02, child/Nicole left the appellant's sister/caretaker's home.
- 6) In 10-02, child/Nicole was placed with another caretaker/Patricia W. This caretaker received OWF for Nicole and continued to receive OWF for Nicole even after custody was returned to the appellant in 01-03.
- 7) In 12-02, child/Nicole was returned to the appellant's home on an "extended visitation" basis.
- 8) On 01-07-03, legal custody of child/Nicole was returned to the appellant. A court order was issued for this custody change, awarding the appellant \$326.15 per month child support and legal custody of child/Nicole, effective 01-07-03, under Order #AD0190453901 / SETS #7010073604 (Exhibit C).
- 9) On 02-10-03, the agency received a copy of the custody order returning child/Nicole to the appellant, per SFRC (Exhibit E).

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- 10) On 04-07-03, the agency received the support order for this custody change, per SFRC (Exhibit E).
- 11) On 05-05-03, a court Judgment Entry was issued ordering all child support collected for child/Nicole by the agency be sent to the appellant effective 01-07-03 (Exhibit H). Per the appellant, this court order was faxed to the agency.
- 12) No child support payments were held under the appellant's original divorce order (Order #D021343800 / SETS #7010073604) for the period 01-03 to 03-03. Prior to 01-03, the last payment received on this case & order # was collected on 09-19-02, but it was not sent to the appellant as she did not have custody of Nicole in 09-02. The next payment on this case & order # was received on 03-21-03 and was released to the appellant (Exhibit B).
- 13) Child support payments were held for the period 01-03 through 03-03 under Order #D021343801 / SETS #7033767984, which was the caretaker's case (appellant's sister versus obligor). On 11-05-03, the agency released these held payments, but not to the appellant as ordered by the court. No explanation was provided by the agency for this action.
- 14) Per the appellant, her daughter Lisa's child support worker forwarded the held support payments received from this child's father for the period 01-03 to 03-03 to her. She does not understand why Nicole's child support worker did not do the same.
- 15) The agency submitted evidence from SETS (Exhibit I), showing the held payments collected under the CTR case (Order #D021343801 / SETS #7033767984) were released on 11-05-03, after the agency had received the change in custody and support court orders. However, the agency did not provide evidence or testimony explaining why these payments were not disbursed to the appellant.

CONCLUSIONS OF POLICY

Policy

Per the Child Support Enforcement Manual (CSEM) 3900,

(C) The following addresses procedures for terminating a child support order for all children, some children or one child, terminating income withholding and explaining associated hearing rights.

(1) Reasons for which a child support order should be terminated include all of the following:

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(g) Change of legal custody of the child.

(3) Termination investigation

(a) On receipt of a notice from an obligee or obligor, the CSEA administering a child support order shall complete an investigation twenty calendar days after receipt of the notice. The agency may conduct an investigation on its own initiative if it has reason to believe that there may be a reason for which the order should terminate.

(H) Disbursement of funds at termination

(1) CSEAs are required by section 3119.94 of the Revised Code to return impounded funds to the appropriate person.

Per the Ohio Revised Code (O.R.C.) 3119.94,

The director of job and family services shall adopt rules that provide for all of the following:

(A) The payment of the appropriate person of any funds that a court or child support enforcement agency has impounded under section 3119.90 or 3119.92 of the Revised Code.

B) The return to the appropriate person of any other payments made pursuant to a child support order if the payments were made at any time after the child support order has been terminated pursuant to section 3119.90 or 3119.92 of the Revised Code;

(C) Any other standards, forms, or procedures needed to ensure uniform implementation of sections 3119.86 to 3119.94 of the Revised Code.

Per Ohio Administrative Code (OAC) 5101:6-7-(C)(1)(c),

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

During a 13 month period, from 12-01 to 01-03, there were four (4) changes in custody for the appellant's child/Nicole. In 12-01, child/Nicole was removed from the appellant's home by Children and Family

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Services. In 03-02, Children and Family Services placed this child was in a caretaker/CTR's home (appellant's sister). In 10-02, the child was placed in another CTR's home (Patricia W.), and then in 01-03, custody of child/Nicole was returned to the appellant.

During this time period, there were also several court orders that were in effect. Prior to Children and Family Services' 12-01 intervention, there was a divorce order in effect ordering support be paid to the appellant under Order # D021343800-case #7010073604. A second order was established in 07-02, re-directing child support to be paid to the CTR/appellant's sister under Order #D021343801-case #7033767984. It was not determined at the state hearing whether there was a third court order established placing the child with the second CTR (Patricia W.) and/or re-directing support to her. In 01-03, there a court order was issued returning custody of this child to the appellant and ordering support be paid to her under Order #AD0190453901-case #7010073604. The appellant began to receive payments under this order on 03-21-03 (Exhibit B).

The appellant requested this hearing to dispute non-receipt of payments for the period 01-03 to 03-03. These payments were held by the agency and then were released 11-05-03, but not to the appellant. There was no evidence or testimony presented by the agency establishing to whom these held payments were disbursed to and why. Per documentation submitted by the agency from SETS (the state's child support computer system), the agency received copies of the court order returning custody and support for child/Nicole to the appellant in 02-03 (Exhibits E and I). There was no evidence or testimony presented by the agency establishing when each of the prior court orders terminated, what the court had ordered be done with any support that was collected and/or being held, and what arrears owed were under each court order at the time the orders terminated. The agency did not meet the requirements of OAC 5101:6-7-(C)(1)(c).

Therefore, without this information, this Hearing Officer cannot determine if the impounded funds were returned to the appropriate person, as required by CSEM 3900(H) and ORC 3119.94. The agency did not show, by a preponderance of the evidence, that the payments that were held for the period 01-07-03, when custody and support for child/Nicole was returned to the appellant by the court, and 03-21-03, when the appellant began to receive support under Order #AD0190453901-case#7010073604, should or should not have been released to the appellant on 11-05-03. Therefore, the agency is directed to provide the appellant with a documentation and an explanation of why payments were not released to her for the period 01-07-03 to 03-20-03. This appeal is therefore, SUSTAINED.

HEARING OFFICER'S RECOMMENDATIONS

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

The agency is directed to provide the appellant with documentation and an explanation of why payments that

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were held for the period 01-07-03 to 03-20-03, and were released on 11-05-03, were not released to her (appellant). The agency shall notify the appellant of these actions, in writing, affording the appellant new hearing rights, if needed.

FINAL ADMINISTRATIVE DECISION AND ORDER

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

EXHIBITS

Agency

- A) SETS "IQCM Case Participants" screen-print for case #7010073604 / Order #AD0190453901.
- B) SETS "PHAS Account Summary" screen-print for case #7010073604 / Order #D021343800 for payments from 09-12-02 through 04-10-03 and "PHAS Account Summary" screen-print for case #7010073604 / Order #AD0190453901 for the period 01-01-03 through 04-10-03, both cases and order #s contain the same case participants.
- C) SETS "SESB Sub-Order" screen-print for current child support ordered for case #7010073604 / Order #AD0190453901, with effective date of 01-07-03.
- D) SETS "RTAH Allocation Hierarchy" screen-print for case #7010073604 / Order #AD0190453901 for January, 2004.
- E) SETS "SFRC Running Record Comments" entries from 09-12-02 through 06-17-03 for case # 7010073604.
- F) SETS "PHCS Collection Summary" screen-print for case #7010073604 / Order #D021343800 for collected payments from 09-05-02 through 04-04-03 for the appellant versus APF/Gary C. case.
- G) SETS "PHCD Disbursement Summary" screen-print for case #7010073604 / Order #D021343800 for disbursed payment from 03-26-03 through 04-10-03 for the appellant versus APF/Gary C. case.
- I) SETS "PHAS Account Summary" screen-print for case #7033767984 / Order #D021343801 for the period 11-21-02 through 09-04-03 for the CTR/Sharon B. versus APF/Gary C. case.
- J) SETS "SFRC Running Record Comments" entries from 12-20-02 through 10-28-03 for case #7033767984 / Order #D021343801 for CTR/Sharon B. versus APF/Gary C. case.

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Appellant

H) The 05-07-03 court Judgment Entry (not received).

Date Issued: 02/27/2004