

STATE HEARING DECISION

ODHS 4005 (Rev. 9/94)

County MONTGOMERY	District Hearings Section COLUMBUS	Assistance Group Name		Assistance Group Number
Place of Hearing MONTGOMERY	Initial Hearing Date 02/17/2005	Rescheduled Postponed to	Rescheduled Postponed to	Rescheduled Postponed to

Appellant/Representative	Appellant Representation
	Local Agency Representation Anne Bissacco

Date Notice Mailed 12/20/2004	Date Received by Local Agency	Date Received by ODHS 01/31/2005	Date Appeal Summary Received	Date Scheduling Notice Mailed 02/04/2005
Appeal Number(s)/Program(s) 1213307/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, Bureau of State Hearings, P.O. Box 182825, Columbus, Ohio 43218-2825 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 Bureau of State Hearings 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

On December 20, 2004, the Montgomery County Child Support Enforcement Agency (Agency) mailed notice of an Administrative Adjustment Review Denial Notice. The notice provided the reason for denial as verification had not been provided to indicate a substantial change in either party's income that would warrant a review of the child support order at this time. At the hearing, the Appellant's main issue was the date and amount of child support that was established through the court on 8/23/04. The issue under appeal is whether the Agency has correctly responded to the request for review and the Appellant's concerns regarding the effective date of the child support order. After careful review of the fact and rules that apply, the Appellant's case, as a custodial parent, does not meet the requirements for a review and the Agency does not have the authority to change the date the court set the effective date of the child support order. The Hearing Officer therefore, recommends the appeal be overruled.

PROCEDURAL MATTERS

GNB

Appeal(s) OVERRULED 1213307	Date Issued 04/08/2005	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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The request for state hearing was received by the Bureau of State Hearings on January 31, 2005. The hearing was scheduled and heard on February 17, 2005. All parties providing testimony were sworn in.

FINDINGS OF FACT

1. The Appellant is the custodial parent and requested the Agency establish paternity and child support for her child in March 2003.
2. The Agency began the process to establish paternity and support on March 5, 2003.
3. The Agency sent the Appellant paperwork on March 13, 2003, to be filled out and returned.
4. After non receipt of the paperwork requested, the Agency called the Appellant on April 17, 2003, and was told by a male friend of the Appellant that she had returned the paperwork but would hand deliver it to the Agency.
5. Once the paperwork was received, the Agency proceeded with postal and employer verification before referring the case to the prosecutor's office.
6. In May 2003, the Agency received valid postal and employer verification and referred the case to the prosecutor's office for paternity/support establishment and informed them of the fact that this was an out-of-state case as the alleged father lived in Georgia.
7. The Agency received an acceptance of the case response from the prosecutor's office in Georgia in October 2003.
8. The alleged father disputed paternity and genetic tests were completed in June 2004.
9. The order was set August 23, 2004.
10. The Agency received a request for review and issued notice of denial on December 20, 2004.

CONCLUSIONS OF POLICY

Policy

(1) Child Support Enforcement (CSE) Manual 2402 outlines the frequency and condition of reviews of child support. According to this rule, when there is no assignment, a review of the order is required only at the request of either party no sooner than thirty-six months after the establishment of the order or the most recent review. Circumstances which warrant a review sooner than the required thirty-six-months include the following:

- (1) If the minimum amount of support is ordered based on the child support guideline schedule at the time the order is entered due to the unemployment or underemployment of the obligor, and information becomes available that the obligor has moved from being unemployed to employed or has changed from being underemployed to obtaining more gainful employment.

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- (2) Either party to the order has experienced a loss of employment for a period of at least six months which is beyond his control, and which can reasonably be expected to continue for an extended period of time.
- (3) Either party to the order becomes permanently disabled reducing his or her earnings ability, and thirty-six months have not passed since the last review. The disability shall be medically verified by the receipt of social security disability benefits and/or a physician's complete diagnosis and determination.
- (4) Either party to the order cannot pay support for the duration of the child's minority because of institutionalization or incarceration with no chance of parole, and no income or assets are available to the party which could be levied or attached for support.
- (5) Either party has experienced a thirty per cent change in gross income or income-producing assets for a period of at least six months which is beyond his control, and which can reasonably be expected to continue for an extended period of time.
- (6) If one or more of the children in the order have been deleted from the order because of emancipation or other reasons, or to add additional children born to both parents subject to an existing support order, a review for adjustment is warranted to bring the order into consistency with the guidelines.
- (7) In order to access the availability of health insurance or improved health insurance coverage exists for the children regardless of whether an adjustment in the amount of child support ordered is necessary.
- (8) If the current support award was established as a rebuttal of the guideline amount and the petitioner can show a change in the circumstances which resulted in the original rebuttal of the guideline amount.
- (2) Ohio Admin. Code § 5101:6-3-01 (B) provides the grounds for requesting a state hearing in the child support program by an applicant, recipient or custodial parent as follows:
- (1) An application for child support services has been denied, acted upon erroneously, or not acted upon with reasonable promptness.
 - (2) A recipient of child support services, believes the case has been acted upon erroneously, or not acted upon with reasonable promptness.

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- (3) The recipient believes that the CSEA has failed to use appropriate establishment or enforcement techniques.
- (4) 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 termination of cash benefits.
- (5) The custodial parent believes that child support payments, including payments owed to the custodial parent due to agency error, are not being issued with reasonable promptness.
- (6) 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.
- (7) The custodial parent disagrees with the results of an investigation concerning termination of a support order.
- (8) The custodial parent disagrees with the CSEA's decision to close the child support case.
(Effective: 05/31/2004)

Analysis

Here, the Appellant is the custodial parent and has stated that her main concern and reason for requesting a state hearing was the effective date the court set for child support. The Appellant wanted the effective date of the child support order to be retroactive to twelve days after the birth of her child. The Appellant argued that she was not notified of court dates, was not involved or informed of the process going on in Georgia and the information used in determining the child support order was outdated. The Appellant first stated, when questioned, that she received a copy of the court order. Later the Appellant stated that she did not receive a copy of the order and found out the amount of child support set by court from the father of her child. The Appellant also explained that the information was outdated because her income had changed twice, she now makes more money, but was unable to explain how much more.

After review of the rules that apply, a review prior to the thirty-six month set by CSE 2402 would require specific circumstances. While the Appellant alleges a change in income, there is no indication that this is a thirty-percent decrease in gross income. Because no circumstances exist that meet the required criteria for a review prior to the thirty-six-month period, the denial of a review is correct.

With regard to the Appellant's argument of the effective date of the support order, the Hearing Officer has no jurisdiction to change the effective date or amount of a court order through the State Hearing Process. Since the court set the order in August 2004, and the Appellant disagrees with the date child support was effective,

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the Appellant must file a motion to reopen the issue of the effective date through the court in Georgia.

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.

The child support appeal is overruled.

**APPENDIX
EXHIBITS**

Agency

1. Hearing Request (1-page)
2. Appeal Summary (1-page)
3. Running Record Comments (3-pages)

Appellant

1. Absent Parent Tax Return/2003 (9-pages)

Date Issued: 04/08/2005