

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing Nos. M-04/18-239
)
) & M-09/18-609
Appeal of)
)
)

INTRODUCTION

The petitioner appeals two decisions of the Office of Child Support (OCS) regarding a series of actions it has taken to enforce a child support order of the Family Court Division of Chittenden Superior Court. The issue is whether the Board has jurisdiction to hear appeals of this subject matter. This recommendation is based on several status conferences conducted in both matters beginning in April 2018, as well as the filings of the parties.

FINDINGS OF FACT

1. In 2013, petitioner became subject to a Family Court Order from the Vermont Superior Court, Chittenden Family Division, which established an initial child support obligation for his two children. Since that time, the obligation as to one of those children terminated when that child was emancipated, but petitioner remains obligated to pay support for his second child. Over the course of several

years, a support obligation arrearage was incurred because petitioner did not pay for the support of his children.

2. The docket log for the child support case before the Vermont Superior Court documents the five-year history of legal actions to establish, quantify and modify petitioner's child support obligations during which petitioner was actively involved.

3. An entry in that docket log in November of 2016 reflects that petitioner acknowledged he was at least \$10,000 in arrears on child support payments at that point in time.

4. A Child Support Entry Order was issued on May 23, 2017 which established a specific amount of unpaid support.

OCS Trustee Process Collection Action

5. On August 11, 2017 OCS notified petitioner of its ability to pursue administrative actions based upon his account delinquency. That notice stated the amount of child support petitioner owed at the time and identified the types of actions OCS was authorized to utilize in collection efforts, including trustee process of bank accounts. The notice advised petitioner that he had twenty (20) days to appeal the listed types of administrative actions that could be instituted against him. Petitioner filed no appeal.

6. OCS next sent documentation to petitioner on September 27, 2017 advising him that trustee process would be initiated through the issuance of a summons on a particular account at a specific financial institution. Included in this correspondence was a document that contained the following statement: "If you disagree with the summons to trustee, you may request an administrative review by completing the enclosed form within twenty (20) days. . . If you do not request an administrative review or upon a final determination after any review affirming the trustee process, the trustee named above is required to forward to this office the assets held up the amounts specified in the summons." This documentation was sent via certified mail, return receipt requested and on October 12, 2017 petitioner signed a card indicating he had received the correspondence.

7. Petitioner did not request an administrative review within twenty days either of the date of the letter which would have been 10/17/17, or the date he acknowledged receipt of that letter, which would have been 11/1/17.

8. On December 8, 2017 Petitioner requested administrative review. In response, on February 28, 2018 OCS issued an "Administrative Review Dismissal" denying this appeal as untimely, and also noting it was a challenge of the

legality of the collection mechanisms used by OCS, which were valid under state law.

9. In an Order dated December 1, 2017, the Family Court concluded a proceeding to update petitioner's support obligation and found that he was in arrears for a total of \$17,038.74 and ordered him to pay \$50 per month toward that arrearage. A Motion to Reconsider that Order was filed shortly thereafter, and the court stayed operation of the Order. However, on March 12, 2018, the court reinstated the December 2017 order establishing the arrearage amount to be valid.

OCS Lien Collection Action

10. On March 14, 2018 OCS initiated a second collection effort against petitioner.

11. This collection effort was initiated through a Notice of Lien, sent by OCS advising petitioner of the intent of OCS to place a lien on real property owned by the petitioner in Barre City.

12. On April 11, 2018 petitioner filed notice that he was contesting several administrative enforcement actions initiated by OCS including the lien filing.

13. An administrative review was held on May 23, 2018 and OCS issued a second written Administrative Review

Dismissal of this second internal appeal on July 2, 2018, denying the appeal on grounds that the lien was a valid collection remedy and that the amount of the arrearage was contained in a valid and enforceable order of the Chittenden Superior Court. OCS submitted argument in this proceeding asserting that the Board did not have jurisdiction to hear this second appeal (of the lien enforcement action) on the same grounds as stated in their initial argument regarding their authority to initiate a Trustee Process action, stating that both enforcement collection mechanisms were authorized by law.

14. On March 30, 2018 petitioner filed an appeal with the Human Services Board, essentially challenging both previously described OCS collection actions: the Trustee Process and the Property Lien.

OCS Tax Setoff Collection Action

15. During the pendency of this HSB appeal, on August 28, 2018 petitioner filed another HSB appeal which he referred to as an appeal of his "Property Tax Adjustment Payment" by OCS.

16. In this second appeal, which was consolidated with his first appeal, petitioner complained of a property tax adjustment or setoff, whereby monies due to him in the form

of a State Income Tax refund were withheld and turned over to OCS.

17. OCS, upon request, submitted a memorandum explaining their authority pursuant to 45 C.F.R. § 303.72, 15 V.S.A. §794, and 32 V.S.A. §5932 to collect past due support monies from a support obligor's federal and state tax refunds. A condition precedent to such collection efforts is the mailing of an annual notice to the support obligor, and OCS stated that such notice was given to petitioner on October 3, 2017. OCS also asserted that it had certified the outstanding debt and updated it weekly in compliance with the procedures set forth in the statute. OCS confirmed that it had received a set off payment pursuant to this collection effort and indicated that upon compliance with statutory procedures, they have no involvement with the collection procedure and are unaware of the nature or circumstances that pertain to the refund. OCS also asserted that the Board does not have jurisdiction to hear an appeal of a collection effort conducted pursuant to this process.

ORDER

Petitioner's appeals is dismissed for lack of jurisdiction.

REASONS

OCS is required by statute to "establish and implement a grievance procedure to contest decisions of the Office of Child Support." 33 V.S.A. § 4108(a). That same statute contains a provision stating that, "All final decisions of the Office of Child Support are appealable de novo to the magistrate in the Family Division of the Superior Court." Id, § 4108(d). 15 V.S.A. § 799(d), which references 33 V.S.A. § 4108, and pertains specifically to obligors who "contest" trustee process initiated by OCS, also specifies that those appeals lie in family court. Similarly, 15 V.S.A. § 606, which pertains to amounts due under child support orders and imposing surcharges in lieu of interest (15 V.S.A. § 606(d)), requires that motions be filed with the family court to take those actions.

The statute governing Human Services Board appeals also provides appeal rights to certain persons affected by OCS decisions. 3 V.S.A. § 3091(a). That statute, in pertinent part, describes the *kind of persons* who might file a grievance before the Human Services Board:

An applicant for or recipient of assistance, benefits or social services from . . . the office of child support . . . may file a request for a fair hearing with the human services board.

That same section goes on to describe the *kind of claims* that the Board can hear:

An opportunity for a fair hearing will be granted to any individual requesting a fair hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits or services . . . or because the individual is aggrieved by agency policy as it affects his or her situation.

3 V.S.A. § 3091(a).

OCS has adopted regulations governing its grievance procedures which provide appeal rights, and which address the dual jurisdictions of the family court and the Human Services Board. OCS Regulations §§ 2800 et seq. Those regulations provide that appeals which involve "the amount of a debt or a collection remedy" are appealed to the family court, and those that are "general grievances" are appealed to the Human Services Board. OCS Regulations §§ 2801 and 2802. Persons who are dissatisfied with administrative reviews are notified of these appeal rights and are directed to file grievances in accord with that regulation. Problems can arise, however, because appellants themselves must determine whether their appeals are "general grievances" or involve the "amount of a

debt or a collection remedy" when they choose their appeal route.

The petitioner chose to appeal to the Board under 3 V.S.A. § 3091(a), the general jurisdictional statute for the Board. "General grievances" under the OCS appeal regulations, however, are defined as "claims that services or benefits have been denied or have not been acted upon with reasonable promptness. This includes such things as allocation and distribution issues, delays in service, and OCS actions in a particular case." OCS Regulation § 2802 (A). This description is consistent with 3 V.S.A. 3091(a) which allows persons who would like to or who are receiving assistance, benefits, or services from OCS to file grievances with the Board challenging denials, delays and policies which affect assistance, benefits, or services available from OCS.

The petitioner's appeals are not of this nature. Rather, he is specifically challenging the amount of the child support debt, and the OCS authority to use remedies, like trustee process, imposition of liens and tax refund setoffs, to collect on judgments of the court. The Board has consistently held that under OCS Regulation § 2801 and the statutes authorizing it, those kinds of actions are

appealable to the family court that made the original support order, not to the Board. See Fair Hearing Nos. 19,426, J-02/09-104, J-09/16-876, J-12/13-892 & 927, S-01/13-77, B-03/11-127, and B-05/12-29. As the Board is without jurisdiction to hear these matters, the appeals should be dismissed. The petitioner is advised that his appeals should be filed with the family court.

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