

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. B-03/11-127
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision by the Office of Child Support (OCS) dismissing her request for administrative review due to lack of jurisdiction.

Background

Before focusing on the petitioner's grievance with OCS, the petitioner's history with OCS needs to be set out. On or about April 3, 2000, G.P.¹ obtained an Oklahoma Child Support Order against petitioner. During 2009, the Oklahoma Order was registered in Vermont and OCS provided services to G.P. to enforce the Oklahoma Order through collection of an arrearage. The child in question is now a twenty-seven year old man.

Petitioner argued that the Oklahoma Order is void and should not be enforced. Petitioner was unsuccessful in her arguments to the Magistrate and to the Vermont Family Court Division of Superior Court. Her case is presently on appeal

¹G.P. and petitioner are the parents of two children. The Oklahoma Order involves one of the children.

before the Vermont Supreme Court as Docket No. 2010-398. In addition, petitioner filed a companion case in the Vermont Supreme Court involving the dismissal for lack of personal jurisdiction by the Vermont Family Court Division of an arrearage owed petitioner by G.P. based on a Georgia Child Support Order.

The issues regarding the validity of the Oklahoma Order and/or the treatment of the Georgia Order are properly before the Vermont Supreme Court; these issues are not subject to Human Service Board review.

Procedural History

On June 10, 2010, OCS sent petitioner a Notice of Arrearage and Intent to Use Trustee Process to collect the arrearage. The OCS Notice stated the arrearage as \$7,611.30.

The petitioner timely filed a Request for Administrative Review on June 30, 2010.

OCS held an Administrative Review Hearing on December 21, 2010 at which petitioner appeared.

OCS issued an Administrative Review Dismissal on January 28, 2011. OCS found that they could not stay enforcement pending a decision by the Vermont Supreme Court. OCS noted that the Vermont Family Division had denied petitioner's request for a stay of the Family Division Order twice and

that OCS was precluded from acting because the issues were before the Vermont Courts. OCS found they did not have jurisdiction to act. OCS set out petitioner's appeal rights to the Board.

Petitioner's February 24, 2011 request for a fair hearing was filed with the Board on February 28, 2011. A telephone status conference was held on April 27, 2011. The parties were given a briefing schedule. Both parties briefed the issues before the Board.

Issues

The petitioner argues that OCS has discretion whether to enforce the Oklahoma Order pending a decision by the Vermont Supreme Court and that OCS's failure to exercise this discretion is an abuse of discretion.

DISCUSSION

The Office of Child Support (OCS) initiated trustee process after the Vermont Family Division ruled on petitioner's challenges to the registered Oklahoma Order.

The statutory basis for trustee process is found at 15 V.S.A. § 799; the pertinent sections state:

(b) Upon noncompliance with a child support order in excess of one-quarter of the annual support obligation, the office of child support **may** seek to attach assets owned by an obligor and held by a trustee. Prior to

attaching assets held by a trustee, the office of child support shall notify the obligor of the delinquency and of the office's intent to take administrative enforcement action for liens and trustee process and shall provide the obligor with an opportunity to contest the claimed delinquency and enforcement action pursuant to 33 V.S.A. §4108.² If the obligor fails to contest the claimed delinquency within 20 days after notification, or upon a final determination of a delinquency after hearing, the office of child support **may** issue a summons to a trustee as provided in subsection (c) of this section.

(c) If no timely contest is made or upon a final determination of nonpayment of child support equal to or greater than one-quarter of the annual support obligation, the office of child support **may** issue one or more summons to the trustee. (Emphasis added.)

Trustee process is a tool OCS can use to collect certain arrears; however, it is not mandatory that OCS initiates trustee process.

When OCS decided to initiate trustee process, they gave petitioner appropriate notice and an opportunity to file for administrative review.

OCS properly adopted rules governing administrative review of (1) collection remedy or debt amount, and (2) a general grievance. OCS Regulations §§ 2800 *et seq.*

The administrative reviews of collection remedies or the debt amount are subject to court review if a petitioner is

² 33 V.S.A. § 4108 directed OCS to adopt rules pursuant to the Vermont Administrative Procedures Act to establish a grievance procedure.

dissatisfied with the OCS decision. OCS Regulation § 2801. Fair Hearing Nos. J-02/09-104 and 19,426.

Only general grievances are subject to Human Services Board review. OCS Regulations § 2802. Fair Hearing No. 19,393. OCS Regulation § 2802.A states, in part:

All individuals who are involved in a child support case with OCS have the right to request an administrative review of actions or decisions made by OCS. . .

An individual who is aggrieved by an OCS policy as it affects their situation is entitled to a review. Subject matter that may be addressed includes 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.

As noted above, the validity of laws and regulations are not subject to review, nor are decisions involving the professional judgment of legal staff.

Petitioner's grievance is that OCS decided not to stay the trustee process pending a decision by the Vermont Supreme Court in her appeals from the Vermont Family Court Division. She believes that OCS abused their discretion when they did not enter a stay.

Abuse of discretion arises when the decision is made for untenable reasons or the record has no reasonable basis for the decision. State v. Putnam, 164 Vt. 558, 561 (1996). Abuse of discretion can extend to a failure to exercise

authority. In re T.S., 144 Vt. 592, 593 (1984). When determining whether abuse of discretion exists, the Board grants deference to the Department's or Office's interpretation of their regulations and authority.

OCS took note that the Vermont Family Court Division twice refused to grant petitioner a stay of judgment. OCS found that they do not have the authority to supersede a Court decision and noted that petitioner's remedies lie within the Court process. OCS did not abuse their discretion when they determined that they could not provide petitioner with relief through the administrative review process and, as a result, dismissed petitioner's administrative review.

ORDER

OCS's decision to dismiss petitioner's administrative review is affirmed.

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