

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 20,054  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals a decision of the Department for Children and Families, Office of Child Support (DCF/OCS) with regard to the amount of child support owed by him.

FINDINGS OF FACT

1. The petitioner is the father of three minor children who are the subject of a child support order issued by a magistrate of the Vermont Family Court (Chittenden County) on July 5, 2005 upon a petition brought by OCS. The order noted that the petitioner and the custodial parent had been duly served with notice of the establishment hearing but that neither had appeared and that the order was issued by default.

2. Under that order, the Court required the petitioner to pay \$50 per month to the mother (the custodial parent) of his three children and established an arrearage debt to OCS for \$400 for repayment of RUFA benefits paid on behalf of the children. No arrearage was established with regard to the

custodial parent. The petitioner was not ordered to make current payments on the debt owed to OCS.

3. The petitioner has been incarcerated since April of 2005. The Court's order indicates that it was aware of this situation when it established the \$50 per month support payment and the arrearage amount. The order also informed the petitioner that he is to notify OCS of his address within seven days after his release from prison and that he has a right to seek modification of the order "by filing an action in court." Finally, the petitioner was told that he had a right to appeal the order by filing a "Notice of Appeal with the Clerk of the Family Court" within thirty days of the filing date of the order.

4. The petitioner did not take that action. Instead, he asked for an Administrative Review with the Office of Child Support on November 12, 2005. In that request the petitioner stated that he characterized the payment order as a mistake and disagreed with the amount owed because: his children have not been living in Vermont nor receiving Vermont RUFA benefits since February of 2005, and he has been incarcerated and unable to earn money since April 15, 2005.

5. In response to this appeal, OCS supplied the petitioner and the reviewer with a copy of the July 5, 2005

court order and an affidavit of accrued arrearages on November 18, 2005. An OCS reviewer prepared a decision based on a paper review of the petitioner's case. The decision was that OCS had "no authority to change or modify an order issued by the Court." The action taken was to dismiss the review request. The petitioner was advised that he could appeal the decision of the agency to the Human Services Board within thirty days.

6. The petitioner appealed that decision to the Board. During a telephone status conference on December 21, 2005 the parties indicated no disagreement as to the above facts (other than allegations as to the children's current whereabouts) and OCS indicated that it would file a motion to dismiss based upon those agreed facts. The petitioner's argument at that time was that he was improperly served with regard to the petition filed in Court and that OCS has no further role in the matter as his children are out of state.

7. OCS filed its motion to dismiss on January 13, 2006 but it was returned due to incorrect address and was resent on January 20, 2006, to a new address outside of the correctional facility. The petitioner was given thirty days to respond to OCS' motion to dismiss: at the time of this

writing on March 8, 2006, over forty days later, he had not filed a response.

ORDER

The petitioner's appeal is dismissed due to lack of subject matter jurisdiction with regard to annulment or modification of the Family Court's order and for lack of standing to appeal services rendered by OCS to the custodial parent.

REASONS

The relief the petitioner seeks in this case is annulment or modification of an order of the Vermont Family Court. He does not believe the court order is valid for a number of reasons. Those reasons may or may not be valid; however, the Human Services Board is not the appropriate forum to consider that request. It is only the Vermont Family Court that may reverse or modify its own order:

- (a) On motion of either parent or any other person to whom support has previously been granted, or any person previously charged with support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the child support order has not been modified by the court for at least three years, the court may waive the requirement of a showing of a real,

substantial and unanticipated change of circumstances.

15 V.S.A. § 660(a).

Furthermore, any appeal of the order of the magistrate, must be taken to the Family Court, not the Human Services Board, under Vermont Family Proceedings Rule 8. The petitioner was advised of both procedures for appeal and modification in the Family Court's order of July 5, 2005. He must go back to the Chittenden Family Court in order to get the relief that he seeks.

The petitioner has also asserted that OCS should have no further role in collecting on this support order. Contrary to the assertions of the petitioner, OCS has a statutory obligation to continue to collect the money (\$400) owed to the state and to assist the custodial parent to collect on a Vermont order of support, even if she has moved out of state with the children. 33 V.S.A. § 3902. If the custodial parent does not want the assistance of OCS in collecting her current support or any arrearage that may accrue to her, the above statute allows the custodial parent to request that OCS cease that service to her: the petitioner, as the non-custodial parent, is not the person who is receiving assistance and, therefore, has no standing to make this request to either OCS or this Board. See 3 V.S.A. §

3091(a).<sup>1</sup> The petitioner, however, should understand that OCS' withdrawal as collection agent in this case would neither stop the court's order from continuing in effect nor stop arrearages from continuing to accrue. The petitioner is urged to consult an attorney in this regard and to seek out whatever remedies are available to him in the Chittenden Family Court at his earliest opportunity.

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<sup>1</sup> "An applicant for or a 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."