

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 20,108
)
Appeal of)

INTRODUCTION

The petitioner appeals a decision of the Department for Children and Families, Office of Child Support (OCS), determining that it was correct to have certified the petitioner's support arrearages under rules of both the federal and state tax intercept programs.

FINDINGS OF FACT

1. The petitioner is the father of two young children who were the subject of a child support order issued by the Vermont Family Court (Chittenden County) on October 11, 2005.

2. Following a hearing at which the petitioner appeared, the Vermont Family Court established an order of current child support in the amount of \$425 per month beginning October 1, 2005. The petitioner was found to owe no arrearage to the custodial parent; however, he was found to owe \$2,205 as an arrearage to OCS based on the state's provision of RUFA benefits to the non-custodial parent. He was ordered to pay \$10 per month on this arrearage.

3. The magistrate's order advised the petitioner that OCS had other remedies to collect on arrearages even when regular payments were being made under the court order on any arrearage. The petitioner was specifically advised in the notice that a federal tax intercept could occur if the arrearage was more than \$150 to the state of Vermont or \$500 to the custodial party. A state tax intercept could be initiated when the debt to either was more than \$50. The order also advised the petitioner that he had a right to appeal the decision within 30 days and a right to seek modification of the order "by filing an action in court."

4. It does not appear that the petitioner took either of these actions.

5. OCS is assisting the custodial parent to collect support payments. OCS notified the petitioner that he had been certified to both the Internal Revenue Service and the state tax department for tax interception of any tax return to cover the arrearages owed by him. The amount of the certification was not put forth at the hearing.

6. The petitioner filed a request for an administrative review before the Office of Child Support on November 25, 2005. The petitioner protested the certification of the tax intercept saying that he had

financially assisted the custodial parent for four and one half years, had paid \$9,000 towards her car, and had offered her half of his tax return (which she had refused because she was on RUFA assistance).

7. OCS' written review occurred December 7, 2005 at which time OCS concluded that it had no jurisdiction to change the amounts of the court order. OCS informed the petitioner that in addition to the arrearage established by the court to OCS, he was beginning to accrue an arrearage on support owed to the custodial parent. Its records now showed an arrearage to her of \$147.31. Without any analysis, the decision stated only that the petitioner's "account meets the requirements for tax certification and will continue to be certified." OCS "dismissed" his appeal based on a lack of jurisdiction to change the underlying court order.¹ The petitioner was told he could appeal that decision to the Human Services Board.

8. The petitioner appealed the matter to the Board. At hearing, he agreed that the Board could not change the amount of the valid court order and that the calculation of

¹ It is not at all clear why the petitioner's hearing should have been "dismissed" by the OCS review officer. The petitioner raised the correctness of the tax interception certification which requires OCS to review "the validity and the amount of the debt". 33 V.S.A. § 5936(a) and 45 C.F.R. § 303.12. If the review had been thoroughly conducted at the agency level, an appeal to the Board might have been avoided.

the arrearage owed to the state had been approved by the court. Neither did the petitioner dispute OCS' contention that he was currently \$147.31 in arrears on the post-order payments owed to the custodial parent. He protested, however, that he still should not have been certified for tax interception. That is the sole issue before the Board.

ORDER

The action of OCS certifying the petitioner for interception of his federal tax return is affirmed. The petitioner's appeal of OCS' certification of his name for state tax intercept must be dismissed as the Board lacks jurisdiction to hear that matter.²

REASONS

The petitioner has agreed that the Board does not have jurisdiction to annul or modify the underlying amount of a Vermont Family Court order. See 15 V.S.A., § 660, Vermont Family Proceedings Rule 8. However, the Board does have jurisdiction under 3 V.S.A. § 1391(a), to hear the petitioner's grievance with regard to his federal tax offset.

² As OCS did not advise the petitioner that he should appeal decisions on state tax intercepts to the state superior court within thirty days of the decision, the petitioner has an excellent due process argument that notification to take that action did not occur until the petitioner received the Board's order in this case.

(See also 45 C.F.R. § 302.7.) By statute, certifications for state offsets can be made for any debt of \$50 or more; however, appeals from decisions of the claimant agency (in this case OCS) on state tax certifications are to the Superior Court. 33 V.S.A. §§ 5933 and 5936. Therefore, the Board does not have jurisdiction to hear that matter.

The federal regulations governing Child Support Enforcement require a state to certify annually amounts of past-due child support that qualify for interception of federal tax returns. 45 C.F.R. § 303.6. In order to qualify for interception, the overdue support amount must be based upon (1) either an assignment of child support to the state or (2) an order of support to a custodial parent who is receiving collection assistance from the state. 45 CFR § 303.72. The IRS will intercept tax returns for overdue state-assigned support if the amount is at least \$150; however, for interception of over-due custodial support, the amount must be at least \$500. 45 CFR § 303.72(a)(2) and (3).

As the amount which the petitioner owes to the state of Vermont is well over the \$150 figure, OCS was following the federal regulations when it certified the petitioner for interception of his federal taxes to cover amounts owed to it. In addition, since the state-owed amount already meets

the minimum for OCS collection, the amount owed to the custodial parent can be "tacked" on for certification as well. This is particularly so since the child support statute at 42 U.S.C. § 657 (a) (2) (B) (ii) (II) (aa) requires the Department to disburse funds which it collects through any means first to repay any debt owed to the custodial parent.

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