



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

April 13, 2017

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 17-BOR-1255

Dear [REDACTED]:

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Lori Woodward
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: Errin Cain, BCSE, WV DHHR

**WEST VIRGINIA DEPARTMENT OF HEALTH & HUMAN RESOURCES
BOARD OF REVIEW**

██████████,
Appellant,

v.

Action Number: 17-BOR-1255

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on April 5, 2017, on a timely appeal filed February 14, 2017.

The matter before the Hearing Officer arises from the complaint that the Respondent failed to collect and disburse court ordered child support payments to the Appellant. (Other issues raised were found untimely, occurred during a time when she had legal representation, and issues that were then presented to the Court.)

At the hearing the Respondent appeared by Errin Cain, Regional Manager, Bureau for Child Support Enforcement (BCSE). The Appellant appeared *pro se*. The witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

- D-1 Hearing Summary
- D-2 BCSE policy 02000.35 (excerpt)
- D-3 Action Transmittal, Applications for Child Support Services by Individuals not Otherwise Eligible AT-76-09, dated June 9, 1976
- D-4 Appellant's Request for a Fair Hearing signed and dated November 17, 2016, and Denial of trip reimbursements dated November 9, 2016

Appellant's Exhibits:

- A-1 Family Court of ██████████ County, West Virginia, Order entered October 20, 2016

- A-2 Family Court of [REDACTED] County, West Virginia, Amended Temporary Order entered September 16, 2015
- A-3 Family Court of [REDACTED] County, West Virginia, Complaint to Establish Paternity, dated April 23, 2015
- A-4 Partial copy of Department of Health and Human Resources Rights and Responsibilities

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The absent parent, [REDACTED] (Mr. [REDACTED]) requested paternity be established by the BCSE.
- 2) In April 2015, a Complaint to Establish Paternity was filed by BCSE counsel in the Family Court of [REDACTED] County, West Virginia. (Exhibit A-3)
- 3) On September 15, 2015, by agreement of the parties through counsel and approval by the Honorable [REDACTED], Family Court Judge of [REDACTED] County, WV, (hereinafter referred to as the "Court"), an order for temporary child support payments to be made directly by Mr. [REDACTED] to the Appellant was entered with no other BCSE services requested at that time. (Exhibit A-2)
- 4) As there was a temporary order for direct payment of child support to the Appellant, the case was entered into the State Case Registry (SCR) with no additional services being provided until one of the parties completes an Application, as per policy. (*See*, BCSE Manual Section 02010.20.15)
- 5) On October 20, 2016, by Order of the Family Court of [REDACTED] County, West Virginia, (hereinafter referred to as "Order") child support (among other matters) was ordered to be paid by income withholding through the BCSE. (Exhibit A-1)
- 6) The Order specifically instructed the parties that a BCSE Application for Services (hereinafter referred to as "Application must first be made by one of the parties to begin the wage withholding process. Until such time as the BCSE begins withholding wages for child support, child support shall be paid directly to the BCSE by the support obligor. (Exhibit A-1)
- 7) To date, one payment has been made directly to BCSE from Mr. [REDACTED] which has not been disbursed.
- 8) BCSE informed the Appellant she or Mr. [REDACTED] needed to file an Application before wage withholding for child support payments from Mr. [REDACTED] could be initiated and/or any disbursements are made.

- 9) BCSE sent the Appellant several Applications, including providing her a copy at the hearing.
- 10) No Application for Services has been made as of the date of this hearing.

APPLICABLE POLICY

Bureau of Child Support Enforcement Policy Manual (BCSE Manual) 02010.00 describes that intake is the process by which the BCSE obtains the information necessary for the opening of a case, determines the services needed by the applicant, and takes the actions that are relevant in initial case processing. The intake procedure is initiated when a referral is received from Income Maintenance or when an individual applies for services from the BCSE. In cases where the applicant is receiving public assistance benefits, MAO, or title IV-E foster care services, an application for BCSE services is not required. For all NPA [Non-Public Assistance] cases, other than former TANF [Temporary Assistance for Needy Families] cases, an Application for Services must be made.

BCSE Manual Section 02010.20.15 mandates that all support orders, temporary and final, entered by a WV court on or after October 1, 1998 must be entered into the State Case Registry (SCR) in OSCAR with the appropriate codes. This is a Federal requirement for the SCR. If the Court Order states that immediate income withholding is not to begin because of good cause or an alternate written arrangement made between the parties and approved by the Court and neither party applies for BCSE services, the case is only entered into OSCAR for SCR purposes. No additional services are provided until one of the parties completes a BCSE application. [Emphasis added] The services provided are those specified in the application. Note: Initiated and not immediate income withholding procedures must be followed upon completion of the APP-1 or SCA-FC-113. If the case is not a current BCSE case, send the obligee an application (SCA-FC-113) for services.

BCSE Manual Section 10000.10 instructs that a case cannot be closed if it has a WV order for current support. Instead, services must be "reduced" by coding the Case Type O and the Service Type X, so the case will remain in the WV State Case Registry for Federal Case Registry purposes. Reducing Services (Ending IV-D Services by making the case a Non IV-D case) closes out the IV-D portion of the case, but the case remains active for a specific Non IV-D service, e.g., income withholding only, spousal support only, and Federal Case Registry.

WV Code §48-1-231(b), explains that, the filing of an action wherein the establishment or enforcement of child support is an issue constitutes an application to receive services from the bureau for child support enforcement, if the individual filing the action is otherwise eligible for such services: Provided, that any such individual has the option to decline the receipt of such services. [Emphasis Added]

DISCUSSION

The absent parent, [REDACTED], requested paternity to be established by BCSE. In April 2015, a Complaint to Establish Paternity was filed by BCSE counsel. Thereafter, on September 15, 2015, by agreement of the parties through counsel and approval by the Court, temporary child support payments made directly by Mr. [REDACTED] to the Appellant was entered with no other BCSE services requested at

that time. As there was a temporary order for direct payment of child support to the Appellant, BCSE entered the case into the State Case Registry (SCR) with no additional services being provided until one of the parties completed an Application, as per policy.

On October 20, 2016, the Court entered an Order establishing, among other things, child support payments to the Appellant by income withholding through BCSE. The Order specifically instructed, “[i]n order for the BCSE to begin the wage withholding process, one of the parties must apply for BCSE services by completing a BCSE Application for Services ... Until such time as the BCSE begins withholding wages for child support, child support shall be paid directly to the BCSE by the support obligor that an Application first must be made by one of the parties to begin the wage withholding process. Until such time as the BCSE begins withholding wages for child support, child support shall be paid directly to the BCSE by the support obligor.” It is noted that one child support payment has been made to the BCSE from Mr. [REDACTED] however, because there has been no Application and, thus, there is no active case, the money cannot be disbursed.

BCSE personnel have explained to the Appellant an Application must be made before receiving services. Several Applications have been sent to the Appellant, including one being sent to Mr. [REDACTED]. No Application has been completed by either party as of the date of this hearing. The Appellant seeks to have BCSE provide child support collection services without the completion of an Application.

The Appellant refused to complete the Application citing her belief that Mr. [REDACTED] had already made an application to BCSE when he filed to have paternity established, and believes the BCSE has “jerked” her around. However, when the Amended Temporary Order was entered in September 2015 establishing temporary child support payments to be made directly from Mr. [REDACTED] to the Appellant, the case was put in a reduced status, per policy. No additional services are provided until one of the parties completes a BCSE application. (*See*, BCSE Manual Section 02010.20.15)

The Appellant also asserted that by the absent parent’s filing of the action wherein the establishment or enforcement of child support was an issue, BCSE should have by state law, considered this as an application, citing WV Code §48-1-231(b). However, the WV Code provision cited further states that the individual who files the action with child support as an issue, must have the option to decline the receipt of such services, which Mr. [REDACTED] did not. Mr. [REDACTED] the Petitioner in the civil action in the Family Court of [REDACTED] County West Virginia, was ordered to make child support payments through wage withholding by the BCSE. He could not decline the receipt of such services. Additionally, the Order was clear that an Application must be made to begin the wage withholding process.

CONCLUSION OF LAW

- 1) As temporary child support payments were ordered to be made directly to the Appellant, the BCSE correctly put the case initiated by the absent parent, Mr. [REDACTED] in a reduced status, requiring an Application for additional services.

- 2) On October 20, 2016 the Court ordered Mr. [REDACTED] to make child support payments by wage withholding to begin through the BCSE by either party completing an Application.
- 3) No Application to BCSE has been made in order for the wage withholding process to begin.
- 4) The Respondent correctly required an Application to be made before providing wage withholding services.

DECISION

It is the decision of the State Hearing Officer to **affirm** the Respondent's requirement for an Application for Services to be made prior to initiating wage withholding process and disbursement of any collected child support payments directly paid to BCSE.

ENTERED this 13th day of April 2017.

Lori Woodward, State Hearing Officer