



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Raleigh County District
407 Neville Street
Beckley, WV 25801

Jolynn Marra
Interim Inspector General

April 23, 2020

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 20-BOR-1320

Dear Ms. [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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc: Neil Boden, Esquire, [REDACTED] County DHHR

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

██████████,

Appellant,

v.

Action Number: 20-BOR-1320

**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 8, 2020, on an appeal filed February 27, 2020. The matter before the Hearing Officer arises from the February 20, 2020 decision by the Respondent to not pursue legal action on the Appellant's Child Support arrears case.

At the hearing, the Respondent appeared by Neil Boden, Bureau for Child Support Attorney. Appearing as a witness for the Respondent Mary Meade, Child Support Worker. The Appellant appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Department's Exhibits:

None

Appellant's Exhibits:

None

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) On May 1, 2009, the Appellant was ordered to pay Child Support for her minor child who was residing with her mother.
- 2) The Appellant's mother received Temporary Assistance for Needy Families (TANF) on behalf of the Appellant's minor child.
- 3) The order for Child Support for the Appellant's child was terminated on May 1, 2014.
- 4) As of March 31, 2020, the Appellant owed the state of West Virginia \$4,089.28 in Child Support arrears and \$3,588.24 in interest on the principle of her Child Support arrears.
- 5) The Respondent's Bureau for Child Support Enforcement (BCSE) has collected the balance owed from wage withholding and tax intercepts.
- 6) The Appellant did not contest the amount that she owed in Child Support arrears and interest.

APPLICABLE POLICY

West Virginia State Code §9-3-4 states any recipient of financial assistance under the program of state and federal assistance established by Title IV of the federal Social Security Act of 1965, as amended, or any successor act thereto, shall, as a condition of receiving assistance funded under this part, assign to the Department of Health and Human Resources (DHHR) any right the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so paid to the family, which accrues during the period that the family receives assistance under the program.

Any payment of federal and state assistance made to or for the benefit of any child or children or the caretaker of a child or children creates a debt due and owing to the DHHR by the person or persons responsible for the support and maintenance of the child, children or caretaker in an amount equal to the amount of assistance money paid provided that the debt is limited by the amount established in any court order or final decree of divorce if the amount in the order or decree is less than the amount of assistance paid.

The assignment under this section shall subrogate the DHHR to the rights of the child, children or caretaker to the prosecution or maintenance of any action or procedure existing under law providing a remedy whereby the DHHR may be reimbursed for moneys expended on behalf of the child, children or caretaker. The DHHR shall further be subrogated to the debt created by any order or decree awarding support and maintenance to or for the benefit of any child, children or caretaker included within the assignment under this section and shall be empowered to receive money judgments and endorse any check, draft, note or other negotiable document in payment thereof.

The assignment created under this section shall be released upon closure of the assistance case and the termination of assistance payments except for support and maintenance obligations accrued and owing at

the time of closure which are necessary to reimburse the department for any balance of assistance payments made.

Bureau for Child Support Enforcement Policy Manual §05000.15 and WV Code §48-1-302(c) creates an amnesty program for the Obligor who is willing to pay all of his/her arrearages within a sixty (60) month period. In return, part or all of the interest due on the arrears may be erased.

In order to qualify for suspension of all or part of the interest accrued on the past-due child support, the following procedures must take place:

- There must be a written agreement between both parties consenting to the amnesty program.
 - The written agreement must include a reasonable payment plan which is calculated to fully discharge all arrearages (principal and un-waived interest, if any) within sixty (60) months
 - The terms of the agreement shall also include a clause stating that the Obligor must maintain payments on any current support obligation owed.
- The Obligor must petition the Court to enter an order conditionally suspending the collection of all or part of the interest on past-due child support which accrued *prior to the date of the agreement*. If the Obligor requests assistance, the BCSE will file the petition.
- Upon successful completion of the payment plan, the Court shall enter an order which permanently relieves the Obligor of the obligation to pay the accrued interest.
- If the Obligor fails to comply with the terms of the written agreement, then the Court shall enter an order which reinstates the accrued interest.

In BCSE cases with a West Virginia order in which an Obligor or Obligee inquires about the amnesty program, an appointment shall be scheduled for the Obligor, Obligee, and BCSE Worker to discuss the program.

- The program is voluntary in nature;
- The amount of interest;
- Only the interest (or part thereof) may be waived;
- The amount of principal which must be paid;
- Payment options;
- Court approval is required before the agreement may be implemented. Neither the BCSE Worker nor the BCSE Attorney shall be involved in the direct negotiation of the payment agreement. However, if any debt, either principal or interest, is owed to the State of West Virginia, the proposed agreement shall be reviewed and signed (if correct) by the BCSE Attorney before it is submitted to the Court by the parties.

If all interest is owed to the State of West Virginia, the BCSE Attorney shall waive all of the accrued interest in this agreement through the amnesty program.

Bureau for Child Support Enforcement Policy Manual §05000.20.15 states the obligor may request a reduction in the withholding based upon hardship. To determine whether or not there is a hardship, the BCSE Worker gathers the necessary information and presents it to the BCSE Attorney for a decision. This

policy cannot be applied to reduce the payment on current support. However, the policy can be applied to reduce the monthly payment on arrears even in situations where current child support is still owed and collected.

Use the following procedures:

- When contacting the BCSE for a limitation on withholding, the obligor must complete the appropriate affidavit.
- Send a notice to both parties requesting that any additional information be sent to the BCSE within the next 10 days.
- The BCSE will verify the obligor's income with WAGE, Workforce WV, or the source of income, if possible.
- The BCSE Attorney must consider any additional information received, and make a decision based on the information presented.
 - If the obligor has previously been found in contempt for not paying support or has been previously convicted of criminal non-support, the BCSE Attorney may decline to reduce the amount collected.
 - The BCSE Attorney may also deny the request if the Obligor had income for the past six (6) weeks without notifying the BCSE or without making voluntary payments.
- If the BCSE Attorney elects to reduce the withholding, the BCSE Attorney will designate a sum certain amount. The BCSE Worker must send a modification of withholding notice reflecting the new amount.

Department of Health and Human Resources Common Chapters Manual §730.13 states Hearings concerning matters before the Bureau for Child Support Enforcement shall be heard by the Board of Review. Specific reasons for which a hearing may be granted are listed below.

- An application for child support services has been acted upon erroneously, or not acted upon with reasonable promptness;
- Appellant believes that child support payments, including payments owed to the Appellant due to Department error, are not being issued with reasonable promptness;
- Appellant believes that child support collections have not been distributed or disbursed correctly or questions the accuracy of the arrears owed to the Department at the termination of WV WORKS assistance;
- Appellant disagrees with the Department's decision to close the child support case; or
- Appellant believes that the Department has failed to take action against an employer for failure to promptly forward payments withheld from the absent parent's wages.

Exceptions for Certain Child Support Actions.

Decisions to act or not to act which fall within the professional legal judgment of a child support attorney for the Department are not subject to administrative review through the fair hearing process. Prior to assertion of the legal judgment exception by a child support attorney, that attorney must notify the

applicant/recipient or his or her legal representative and the General Counsel for the Bureau for Child Support Enforcement in writing of the factual basis for the assertion. The defense of legal judgment should be asserted only after a careful review of the file. The necessity of such defense is most likely to occur when an issue or matter is currently pending in a court of law or when the child support attorney has elected and commenced a means for enforcement of support that will involve a court of law.

DISCUSSION

The Appellant's child was a recipient of TANF benefits while residing with her mother. Pursuant to West Virginia State Code §9-3-4, any payment of federal and state assistance made to or for the benefit of any child or the caretaker of a child creates a debt due and owed to the Respondent. The Appellant was court-ordered to pay Child Support in May 2009 to repay the state of West Virginia for TANF benefits paid on behalf of her child. As of March 31, 2020, the Appellant's balance owed to the state was \$4,089.28 in Child Support arrears and \$3,588.24 in interest on the principle of her Child Support arrears.

The Appellant testified that she cannot afford the amount that is withheld from her paycheck that is applied to her balance owed to the state and that her tax returns are intercepted each year. The Appellant stated she has another dependent child in her home, and the amount that BCSE is withholding does not leave her with much to live on. The Appellant requested that her balance be forgiven.

BCSE policy states an Obligor may request a reduction in withholding based upon hardship. This policy cannot be applied to reduce the payment on current support but can be applied to reduce the monthly payment on arrears. The Obligor must complete the appropriate hardship affidavit which is presented to the BCSE attorney for a decision to approve or deny the request.

The Respondent's BCSE attorney, Neil Boden, testified that the Appellant was advised on three (3) occasions that she could complete a hardship affidavit, that if approved, would reduce the amount of her wage withholding. Mr. Boden contended that two (2) affidavits had been mailed to the Appellant, and the third was given to her in February 2020 during an office visit. The Appellant purported that her caseworker insisted that her employer had to complete the affidavit and her employer faxed the affidavit to the BCSE office. As of the date of the hearing, a hardship affidavit had not been received from the Appellant.

The Department of Health and Human Resources Common Chapters Manual §713.30(D) states decisions to act or not to act which fall within the professional legal judgment of a Child Support attorney for the Department are not subject to administrative review through the fair hearing process.

The Respondent has not taken actions to reduce the Appellant's withholding, a decision that rests solely with the BCSE attorney. Although testimony from Mr. Boden indicated that he would approve a withholding reduction if the Appellant completed the appropriate hardship affidavit, the Board of Review holds no authority to review actions that fall within his professional legal judgement. Furthermore, while the Appellant requested that the \$7,677.52 balance owed to the state of West Virginia for TANF benefits paid on behalf of her child be forgiven, there is no provision in policy or State Code that allows the debt owed to the state to be forgiven.

CONCLUSIONS OF LAW

- 1) The Appellant owes the state of West Virginia \$7,677.52 in Child Support arrears and interest due to a debt created when her son was a recipient of TANF benefits.

- 2) The Appellant contested the amount of her withholding that is applied to this debt and asked that the debt be forgiven.
- 3) There is no provision in policy or State Code that allows a debt owed to the State be forgiven.
- 4) Policy allows for the Child Support attorney to reduce a wage withholding based upon a hardship.
- 5) The Respondent's Child Support attorney has not approved a wage withholding.
- 6) Decisions to act or not to act which fall within the professional legal judgment of a Child Support attorney for the Respondent are not subject to administrative review through the fair hearing process.

DECISION

Because the relief the Appellant seeks rests with the Child Support attorney and the legal judgement of the Child Support attorney to reduce the Appellant's wage withholding is not subject to administrative review, and there is no relief that can be provided to the Appellant by the Board of Review. The Appellant's request for hearing is hereby **DISMISSED**.

ENTERED this 23rd day of April 2020.

Kristi Logan
State Hearing Officer

