

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

NICKLOS D DUNAWAY,
Petitioner,

v.

DHS, DIVISION OF CHILD SUPPORT SERVICES,
Respondent.

:
: Docket No.: OSAH-CSS-SDCFS-1341551-47-Brown

: Agency Reference No.: 100022658

:
:
:



OCT 2 2013

Hazel Jackson

Hazel Jackson, Legal Assistant

INITIAL DECISION

I. Introduction

In response to Respondent's action to offset Petitioner's Federal income tax refund, Petitioner requested a hearing.

II. Findings of Fact

1.

Petitioner is the obligor of a child support obligation established by a Stephens County, GA order. Respondent has a copy of such an order and any modifications, if any, of such an order. (Testimony of Agent Parker; Respondent Exhibit(s) 1).

2.

The Final Judgment and Decree was issued January 7, 2005, wherein Petitioner agreed to pay \$115.00 per week for child support. This is not a per child order, but an order that, at the time, included three children. Since that time, one child has emancipated and one child has been excluded from the Order; however, Petitioner still must pay \$115.00 per week according to the Final Judgment and Decree, which has never been modified as it concerns the amount of weekly child support. (Respondent's Exhibit 1)

3.

Attached to the Final Judgment and Decree is a copy of a Contempt Order, dated October 26, 2004, and an Arrest order, also dated October 26, 2004. The last page of the Final Judgment and Decree adjudicated arrears at \$6,750.00 in January, 2005. (Respondent's Exhibit 1)

4.

Petitioner owes child support arrears of \$52,681.09 as of August 31, 2013. The arrears balance includes the Custodial Parent's arrears affidavit, as well as all payments that Petitioner has not made. Since the case with the Respondent was opened with DCSS in Georgia, the total payments received have been \$4,818.91, which includes the involuntary payment adjusted by the IRS of \$3,196.70. (Testimony of Agent Parker; Respondent Exhibit(s) 2 and 3).

5.

The custodial parent has assigned the child support rights to Respondent and arrears were at least \$150.00 at the time a request for offset was made. (Testimony of Agent Parker; Respondent Exhibit(s) 2).

6.

Although Petitioner has recently made a request for a review and modification, there has been no modification of the existing child support order, as established in 2005. The review and modification process is under review at the present time in Stephens County, GA.

7.

Petitioner argued and disagreed with the arrears balance due to the "fraud" he believes the custodial parent has committed in the child support case. Petitioner does not believe he should have to pay \$115.00 per week because one child has emancipated, and another child has been excluded. (Testimony of Petitioner)

III. Conclusions of Law

1.

Respondent has the burden of proof in this matter. OSAH Rule 7(1). The evidentiary standard is preponderance of the evidence presented. OSAH Rule 21(4).

2.

Federal law authorizes State agencies charged with child support matters to intercept federal income tax refunds for child support arrears and to apply such funds to arrears due through the end of a tax year at issue. 42 U.S.C.S. § 664; 45 CFR § 303.72. Federal offset is authorized on a welfare case if there is an arrears due of at least \$150.00 and is authorized on a non-welfare case if there is an arrears due of at least \$500.00. Id.

3.

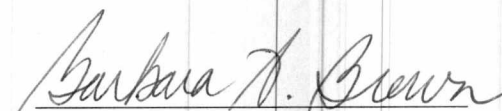
In the present case, Respondent has established by a preponderance of the evidence that it has met the requirements for the offset of the Federal income tax refund, and Petitioner has done nothing, and presented no evidence, to refute Respondent's proof.

Accordingly,

IV. Decision

Respondent's offset of Petitioner's Federal income tax refund is **AFFIRMED**. Respondent is authorized to retain the tax offset to the extent that child support arrears remain due.

SO ORDERED, this 2nd day of October 2013.


BARBARA A. BROWN
Administrative Law Judge