

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

JENINA EARL,
Petitioner,

v.

**DHS, DIVISION OF CHILD SUPPORT
SERVICES,**
Respondent.

:
: **Docket No.:**
: **OSAH-CSS-REPAY-1629767-44-Walker-Russell**
:
: **Agency Reference No.: 490026409**
:
:



JUN 01 2016

INITIAL DECISION

I. Introduction:


Christa Orbann, Legal Assistant

In response to Respondent's action to collect child support arrears in the amount of \$3,402, Petitioner requested a hearing in this matter to dispute the alleged arrears amount. The hearing was held on May 24, 2016.¹ Petitioner represented herself and LaSwanda Brown, Child Support Enforcement Supervisor, represented Respondent. For the reasons indicated below, Respondent's action is **AFFIRMED**.

II. Findings of Fact:

1.

Petitioner is the obligor of a child support obligation established by a judicial order. The child support order requires Petitioner to pay \$189 per month beginning July 1, 2014, for one child. Respondent has a copy of the original order and any modifications to the order. On December 10, 2015, the Division of Child Support Services (DCSS) received an application for services from custodial parent, Charlie Bussey III, to enforce the child support provisions ordered in the Final Change of Custody Order entered in DeKalb County, Civil Action Number 13CV5172-5 filed May 20, 2014 and amended May 27, 2014. The order provides that the non-custodial parent, Jenina Earl, (Petitioner) shall pay \$189.00 per month to the custodial parent for the support of their child, D.M-B. Charlie Bussey, III provided an affidavit of arrears stating that Petitioner is behind on the child support obligation in the amount of \$3,402.00 as of December 30, 2015.

DCSS sent notice to Petitioner that Mr. Bussey had opened a case with DCSS and that Petitioner is now required to pay the monthly child support obligation through DCSS. In addition, Petitioner was informed that Mr. Bussey alleges that Petitioner is delinquent in her child support obligation. Petitioner objected to the allegation of arrears and requested an administrative hearing on January 8, 2016. (Testimonies of LaSwanda K. Brown, Child Support Enforcement Supervisor and Charlie Bussey, III; Exhibit R-1).

2.

Petitioner disputes that she owes \$3,402 in child support arrears. Specifically, Petitioner maintains that she has paid \$2,630 in cash to Charlie Bussey, III and only owes \$772 in child support arrears. However, Petitioner concedes that she did not obtain receipts for the alleged \$2,630 in payments from Mr. Bussey and sought to introduce into evidence copies of receipts written by Petitioner to herself, which are inadmissible as self-serving documents to bolster Petitioner's own statements. (Testimony of Petitioner; Exhibit R-2).

¹ The record was held open until Tuesday, May 31, 2016, for Respondent to submit the applicable policies/laws in this matter.

3.

Charlie Bussey, III provided credible testimony at the hearing that Petitioner did not pay him \$2,630 in cash and failed to make any child support payments from July 2014 through December 2015. Upon careful review and consideration of the testimonies of Petitioner and Mr. Bussey, I find Mr. Bussey's testimony to be credible and persuasive.

4.

Respondent is providing services to the custodial parent and the arrears are \$3,402 as of December 31, 2015. Respondent seeks to have an additional amount added to Petitioner's child support obligation each month to repay the past-due amount. Respondent requests an extra \$37.00 per month, which is 20% of the monthly child support amount. (Testimony of LaSwanda K. Brown, Child Support Enforcement Supervisor).

III. Conclusions of Law:

1.

Respondent has the burden of proof in this matter. OSAH Rule 616-1-2-.07(1). The evidentiary standard is preponderance of the evidence presented. OSAH Rule 616-1-2-.21(4).

2.

O.C.G.A. § 19-11-19 allows the Department of Human Services' Division of Child Support Services to obtain an order for the garnishment ("Income Deduction Order") of the support obligor's wages under O.C.G.A. §§ 19-11-19 and 19-11-20, or for the child support obligor's employer to "withhold and deliver to the department the disposable earnings which are due, owing, or belonging to the responsible parent" pursuant to O.C.G.A. § 19-11-19 (g)(1).

3.

DCSS is required to enforce and collect child support obligations ordered by a court when a party applies for child support services. (O.C.G.A. §19-11-121; Georgia Child Support Rules 290-7-1-.03 through .05).

4.

If the parties have an existing child support order, the applicant must provide DCSS with a copy of the order and an affidavit of arrears swearing to the amount of past due support owed, if any. If an obligee alleges that arrears are owed, DCSS must send a letter to the obligor by first class mail stating that child support payments must be made through DCSS and state the alleged amount of past due support. An obligor is also told of the right to have an administrative review of the arrears. (O.C.G.A. §19-11-18).

5.

The defenses that an obligor can assert at an administrative hearing regarding alleged arrears are:

- a. Mistake of identity (he or she is not the person obligated to pay the child support);
- b. Mistake of current support amount charged;
- c. Mistake in the calculation of past due support. (Employee Reference Guide (ERG) at 91.02).

6.

At a hearing on the issue of the alleged arrears owed, testimony must be presented regarding procedures used and the basis for the support obligation and arrears and interest calculation. The administrative judge can consider the following evidence to determine the amount of arrears: copies of all applicable order(s); copy of the Request for Hearing; copy of the GA child support guidelines (O.C.G.A. §19-6-15), if used in calculating the support award; an A&I calculation; and any other documentary evidence that may have a bearing on the issue. (ERG at 723.06).

7.

After hearing the evidence, the Administrative Law Judge makes a decision based on the preponderance of the evidence and determines the amount of arrears owed, if any. The obligor may appeal this finding. (ERG at 723.07).

8.

In this matter, Respondent has established by a preponderance of the evidence that Petitioner is legally obligated to pay child support, and thus is an "obligor" as defined in Title 19, Chapter 11, O.C.G.A. Respondent has also established through credible evidence that the amount due to the custodial parent for delinquent child support is \$3,402 and requests that Petitioner repay the child support arrearage at the rate of \$37.00 per month to be added to the current support payment.

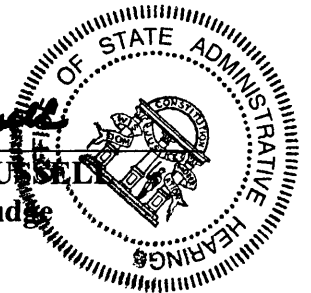
IV. Decision:

Based upon the forgoing, Respondent's action to collect child support arrears in the amount of \$3,402 is **HEREBY AFFIRMED**. Petitioner is ordered to repay child support arrearage at the rate of \$37.00 per month, in addition to her current support payment of \$189.00. Respondent may also issue an Income Deduction Order to Petitioner's employer for the total amount of \$226.00 per month.

SO ORDERED, June 1, 2016.



CAROL WALKER-RUSSELL
Administrative Law Judge



**NOTIFICATION
OF
RIGHT TO AGENCY REVIEW**

Public Assistance cases and Child Support Enforcement Cases:

Either party may ask for a review of this decision by the agency within 30 days. The request should be sent to:

Georgia Department of Human Services
Commissioner's Designated Representative for Appeals
2 Peachtree Street, NW, 29th Floor,
Atlanta, GA 30303-3142

Medicaid and Provider Cases:

Either party may ask for a review of this decision by the agency within 10 days for provider cases and within 30 days for all other Medicaid cases. The request should be sent to:

Georgia Department of Community Health
Commissioner's Designated Representative for Appeals
2 Peachtree Street, NW, 40th Floor
Atlanta, GA 30303-3159