



BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

AUG 24 2017

Hazel Jackson
Hazel Jackson, Legal Assistant

RICARDO PICHARDO,
Petitioner,

Docket No.: 1736506
1736506-OSAH-CSS-SDCFS-47-Brown

v.

Agency Reference No.: 570026490

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

INITIAL DECISION

I. Introduction

Petitioner Ricardo Pichardo requested a hearing after Respondent, the Department of Human Services, Division of Child Support Services (“CSS”), intercepted his tax refund based on his accumulation of a child support arrears. The hearing on this matter was conducted via telephone conference on July 26, 2017. Petitioner represented himself at the hearing and Corlissia Fairbanks, Agent, CSS, participated in the hearing on behalf of CSS. For the reasons indicated herein, CSS’s action is **AFFIRMED**.

II. Findings of Fact

1. Mr. Pichardo’s divorce from his wife, Sonnet Pichardo, was finalized by Final Judgment and Decree entered in the Superior Court of Muscogee County on April 16, 2015. According to the Final Judgment and Decree, Mr. Pichardo failed to appear for the final hearing on the complaint for divorce, despite having received proper notice. *Pichardo v. Pichardo, Civil Action No. SU-14-DM-2835 (Apr. 16, 2015)*.

2. Pursuant to the terms of the Final Judgment and Decree, Mr. Pichardo was obligated to make monthly child support payments of \$628.00 beginning on April 15, 2015 for the care of his four children: A.P., born September 12, 2001; Ri.P., born July 16, 2005; Rh.P., born June 2,

2007; and S.P., born June 2, 2009. These payments were to be made directly to Sonnet Pichardo, the custodial parent. *Pichardo v. Pichardo, Civil Action No. SU-14-DM-2835 (Apr. 16, 2015).*

3. In determining the appropriate amount of monthly child support, the Superior Court of Muscogee County considered the fact that each of the minor children received a separate disability benefit from Mr. Pichardo in the amount of \$163.00 per month. The disability benefit payment was also paid directly to Sonnet Pichardo. *Pichardo v. Pichardo, Civil Action No. SU-14-DM-2835 (Apr. 16, 2015).*

4. As of March 2017, Mr. Pichardo owed a total of \$15,072.00 in child support arrears due to his non-payment of monthly child support in the above-identified case. *Child Support Arrears and Interest Calculator; Testimony of Corlissia Fairbanks.*

5. In April 2017, CSS intercepted Mr. Pichardo's federal and/or state income tax refund of \$3,846.00 and applied it toward his arrears balance in the above-identified child support case. *Child Support Arrears and Interest Calculator; Testimony of Corlissia Fairbanks.*

6. According to CSS's calculation, Mr. Pichardo owed \$13,110.00 in child support arrears as of June 30, 2017. *Child Support Arrears and Interest Calculator; Testimony of Corlissia Fairbanks.*

7. Because Mr. Pichardo resided in El Paso, Texas, CSS sent the Final Judgment and Decree to the Child Support Division of the Texas Attorney General's office (hereinafter "CSD") on or about August 4, 2015. However, for reasons that are unclear to the Court, that office did not commence enforcement of the Final Judgment and Decree. *Testimony of Corlissia Fairbanks.*

8. At the time the Final Judgment and Decree was entered, Mr. Pichardo had a separate arrears balance due to his non-payment of a child support obligation established by a Temporary

Order¹ issued in the State of Texas. This arrears balance was satisfied, in part, by garnishing Mr. Pichardo's Social Security benefits. *Testimony of Ricardo Pichardo; Letter from Social Security Administration dated October 16, 2016; Letter from the Attorney General of Texas, Child Support Division dated June 7, 2017.*

9. Between November 2012 and March 2017, CSD collected \$14,827.00 from Mr. Pichardo and applied it toward his child support arrears. According to a "Financial Activity Report" generated by CSD, Mr. Pichardo owed no child support arrears as of March 2, 2017. It is unclear from the Financial Activity Report or elsewhere in the evidentiary record how much of the \$14,827.00 was comprised of garnished Social Security benefits. *Attorney General of Texas – Child Support Division, Financial Activity Report.*

10. At the hearing, Mr. Pichardo asserted that CSS should have credited the money collected in satisfaction of the Texas arrears balance toward the Georgia child support arrearage. Mr. Pichardo also objected to CSS's purported failure to provide him with notice of the Final Judgment and Decree or of his obligation to pay child support. However, he acknowledged that he had not been making the monthly payments established by the Final Judgment and Decree. *Testimony of Ricardo Pichardo.*

11. Mr. Pichardo was uncertain how much of the money collected in satisfaction of the Texas arrears balance was comprised of garnished Social Security payments. He testified that, prior to his divorce from Mrs. Pichardo, CSD garnished the wages he earned as a truck driver. According to Mr. Pichardo, he stopped working as a truck driver after the divorce, whereupon

¹ Neither party provided the Court with a copy of the Temporary Order. From Ms. Fairbanks' testimony, it appears that the Temporary Order was inactive, and that Texas' child support enforcement entity was collecting only on the arrears owed by Mr. Pichardo. As the Court is not in possession of the Temporary Order, it cannot determine which children are covered by the Temporary Order. However, Sonnet Pichardo is listed as the custodial parent on the Financial Activity Report describing the arrears owed on the Temporary Order. *Testimony of Corlissia Fairbanks; Attorney General of Texas – Child Support Division, Financial Activity Report.*

his sole income was comprised solely of monthly Social Security benefits. *Testimony of Ricardo Pichardo.*

III. Conclusions of Law

1. CSS bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2. In accordance with a federal mandate, the General Assembly enacted the Uniform Interstate Family Support Act (“UIFSA”), and thereby adopted uniform procedures governing intergovernmental establishment, enforcement, and modification of child support orders. O.C.G.A. § 19-11-100 et seq.; Ga. Comp. R. & Regs. 290-7-1-.13. CSS is “the enforcement agency in Georgia for all UIFSA actions,” as well as the state entity responsible for the enforcement of child support obligations and for the collection of child support. O.C.G.A. § 19-11-102(b); Ga. Comp. R. & Regs. 290-7-1-02, -.13.

3. Federal law authorizes state agencies charged with child support matters to intercept income tax refunds for child support arrears and to apply such funds to arrears due through the end of the tax year at issue. 42 U.S.C. § 664; 45 C.F.R. § 303.72; see Ga. Comp. R. & Regs. 290-7-1-.08 (Federal and State Tax Refund Intercept Program). Federal offset is authorized on a welfare case if there are arrears of at least \$150.00 and is authorized on a non-welfare case if there are arrears of at least \$500.00. Id.

4. In the present case, CSS established by a preponderance of the evidence that it has met the requirements to intercept Mr. Pichardo’s income tax refund. Mr. Pichardo is a child support obligor pursuant to the Final Judgment and Decree issued by the Superior Court of Muscogee County. At the time of the tax refund intercept, Mr. Pichardo owed \$15,072.00 due to his non-

payment of child support. CSS was therefore authorized to intercept Mr. Pichardo's tax refund and apply those funds to his arrearage balance.

5. Mr. Pichardo disputed CSS's action due, in part, to CSS's purported failure to notify him that he had an active child support case in Georgia. Prior to collecting Mr. Pichardo's tax refund offset, CSS was obligated to notify Mr. Pichardo that the amount of his past-due support was to be referred to the Secretary of the United States Treasury and of his right to an administrative hearing to contest the certification of the intercept. 45 C.F.R. § 303.72; Ga. Comp. R. & Regs. 290-7-1-.08(c). However, CSS was not required to ensure that Mr. Pichardo received notice of the active child support case as a condition precedent to instituting tax intercept proceedings. See id. Mr. Pichardo did not assert that CSS failed to notify him of the tax intercept. Moreover, the fact that Mr. Pichardo submitted a timely hearing request suggests that he received the requisite notice.

6. Mr. Pichardo further argued that the child support collected and applied toward child support arrears in Texas should be counted toward the arrears attributable to his non-payment of the Georgia Final Judgment and Decree. Although Georgia's UIFSA allows for tribunals, such as this Court,² to credit amounts collected by other state child support enforcement entities toward amounts owed under a Georgia child support order covering the same period, the same child support obligor, and the same child(ren), the Court does not find this provision applicable in this case. See O.C.G.A. § 19-11-118. Texas' child support enforcement entity garnished Mr. Pichardo's Social Security benefits and applied them toward arrears owed pursuant to a Temporary Order. Considering Mr. Pichardo's testimony that he ceased earning wages after his divorce, the Court concludes that, while Mr. Pichardo's Georgia child support obligation was active (April 2015 to the present), the amounts CSD collected and applied toward Mr. Pichardo's

² O.C.G.A. § 19-11-102(a).

arrears balance consisted solely of garnished Social Security benefits. The Final Judgment and Decree established Mr. Pichardo's monthly child support obligation at \$628.00 per month in recognition of the fact that his children received a portion of his Social Security benefits. In other words, the child support sought by the Final Judgment and Decree was *in addition to* the Social Security benefits Mr. Pichardo's children already received at the time. Therefore, the amount collected in satisfaction of the Texas child support arrears cannot be applied toward the Georgia child support arrears, as the Social Security benefits were not "amounts owed" under a Georgia order for child support. See O.C.G.A. § 19-11-118.

IV. Decision

In accordance with the foregoing Findings of Fact and Conclusions of Law, CSS's offset of Mr. Pichardo's income tax refund is **AFFIRMED**. Accordingly, CSS is authorized to retain the tax offset to the extent that child support arrears remain due.

SO ORDERED, this 15th day of August, 2017.


BARBARA A. BROWN
Administrative Law Judge

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RICARDO PICHARDO SR
509 S HILLS ST APT 155
EL PASO, TX 79901

ALBANY HUB INTERTSTATE CENTER
101 N. SLAPPEY BLVD
ALBANY, TX 31701