

**OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

<b>RONALD W. BREIER JR.,</b>	:	
Petitioner,	:	Docket No.: OSAH-CSS-SDCFS-1335964-
	:	126-Walker
v.	:	
	:	Agency Reference No.: 650001103
	:	
<b>DEPARTMENT OF HUMAN</b>	:	
<b>SERVICES, DIVISION OF CHILD</b>	:	
<b>SUPPORT SERVICES,</b>	:	
Respondent.	:	

**INITIAL DECISION**

**I. Introduction**

Petitioner appeals Respondent’s action in intercepting his federal income tax refund for payment of past-due child support. A hearing was held on April 29, 2012 before the undersigned administrative law judge. Petitioner appeared *pro se*. Arthur Moss, Esq. represented Respondent, and child support agent Sonja Turner appeared as a witness. For the reasons indicated, Respondent’s action is **REVERSED**.

**II. Findings of Fact**

1.

Petitioner initially was subject to a 1988 Spalding County Superior Court child support order. Based on his alleged failure to pay child support, a contempt action was filed against Petitioner in Spalding County Superior Court. *Testimony of Arthur Moss, Sonja Turner, Petitioner.*

2.

The Spalding County Superior Court determined that the 1988 child support order was dormant, concluding that Petitioner was not in contempt.<sup>1</sup> On May 7, 2012, the Spalding County Superior Court issued a child support consent order (the “consent order”), which stated:

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<sup>1</sup> A dormant judgment is not enforceable. O.C.G.A. § 9-12-60.

[b]y agreement of the parties a new child support order is hereby ordered[;] the [Petitioner] shall pay to the plaintiff a lump sum of \$20,000 for child support, to be paid in installments of \$125.00 a month each and every month until paid in full. Payments shall start May 1<sup>st</sup> 2012.<sup>2</sup>

*Testimony of Arthur Moss, Sonja Turner, Petitioner; Exhibit R-1.*

3.

Since the issuance of the 2012 consent order, Petitioner has faithfully made the required monthly payments. *Testimony of Arthur Moss, Sonja Turner, Petitioner.*

4.

Notwithstanding that Petitioner was making the monthly payments as ordered under the 2012 consent order, the Department intercepted Petitioner's \$815.00 federal income tax return refund to be applied towards his "past-due" child support. The Department reasoned that because the 2012 consent order determined a lump-sum payment, until that amount was paid in full Petitioner would owe past-due support. *Testimony of Arthur Moss, Sonja Turner.*

### **III. Conclusions of Law**

1.

Respondent bears the burden of proof. Ga. Comp. R. & Regs. r. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

Federal law provides states with the means of intercepting federal tax refunds where a "named individual owes past-due support which has been assigned to such State pursuant to [42 U.S.C. § 608(a) or 671(a)(17)]." 42 U.S.C. § 664(a)(1). As detailed in 45 C.F.R. § 303.72, in a non-TANF case the amount of past-due support owed must not be less than \$500. If a case meets the requirements articulated in 45 C.F.R. § 303.72, Georgia is required to submit the case for federal tax refund offset. 45 C.F.R. § 303.72; *Georgia Child Support Enforcement Agent Procedure (GCSEAP) 713.*

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<sup>2</sup> This child support consent order is binding between the Department and Petitioner. O.C.G.A. § 9-12-40; *Dial v. Adkins*, 265 Ga. App. 650, 651-652 (2004) ("final decree has the effect of binding the parties and their successors as to all matters which were actually put in issue and decided, or which by necessary implication were decided between the parties").

3.

If the Department seeks to impose a tax intercept against Petitioner—an obligor alleged to be delinquent in his child-support payments—the Petitioner may request a hearing before the Office of State Administrative Hearings. O.C.G.A. § 19-11-9.3(h).<sup>3</sup>

4.

Pursuant to 42 U.S.C. § 664(c), “past-due support” is defined as “the amount of a delinquency, determined under a court order . . . for support and maintenance of a child.” Federal regulations further define “overdue support” as “a delinquency pursuant to an obligation determined under a court order,” and “past-due support” as “the amount of support determined under a court order . . . which has not been paid.” 45 C.F.R. § 301.1. Similarly, Georgia law defines a “delinquent obligor” as “any obligor who is not in compliance with an order for child support.” O.C.G.A. § 19-11-9.3(a)(5).

5.

In the instant case, the issue presented is whether Petitioner owes past-due support such that a federal tax intercept is lawful. Several courts that have considered whether there is a delinquency in similar circumstances have determined that an intercept is unlawful if there is no default of a court-ordered obligation. In *Davis v. N.C. Dep’t of Human Resources*, 349 N.C. 208, 209 (1998), the Supreme Court of North Carolina held that a tax intercept was unlawful where the obligor was in compliance with a court order, even if the obligor continued to owe a prior debt for child support. In so ruling, the court determined that delinquency requires “[falling] behind in . . . court ordered payments.” *Id.* at 210-211; *also citing Laub v. Zaslavsky*, 369 Pa. Super. 84 (1987), *aff’d per curiam*, 523 Pa. 102 (1989) (federal income tax refund could not be intercepted where there was “no default of [the obligor’s] court-ordered obligation, although [the obligor] had not extinguished his entire debt.”); *Gladysz v. King*, 103 Ohio App. 3d 1, *disc. rev. denied*, 73 Ohio St.3d 1428 (1995) (“a delinquency is created by a default in performance, not

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<sup>3</sup> Georgia law specifically requires conformity with federal law, stating that “nothing in [the Child Support Recovery Act] is intended to conflict with any federal law or to result in the loss of federal funds.” O.C.G.A. § 19-11-24.

merely by the existence of an outstanding debt.”); *see also In the Interest of R.C.T.*, 294 S.W.3d 238, 247 (Tex. App. Houston 14th Dist. 2009) (federal statute requires a failure to comply with an existing court order of child support, rather than simply money owed, in order to intercept tax refund).

6.

The 2012 consent order establishes a lump-sum payment to be paid in installments; accordingly, Petitioner is only required to pay \$125 per month until the termination of the debt. He has been making these payments. Thus, the payments are not “past-due” or “delinquent” within the generally understood meaning of the terms. *See Black’s Law Dictionary* 439 (7th ed. 1999) (“delinquency” means: “1. A failure or omission; a violation of a law or duty. 2. A debt that is overdue in payment.”).

7.

As explained, Petitioner is in compliance with the consent order, and accordingly his child support payments are not past-due. *See* O.C.G.A. § 19-11-9.3(a)(5) (a “delinquent obligor” is “any obligor who is not in compliance with an order for child support.”). Where the State has intercepted an amount that does not qualify as “past due,” that amount shall be repaid to the child support obligor. 42 U.S.C. § 664(a)(3)(D).

#### IV. Decision

Respondent is in compliance with his court-ordered child support payments. Accordingly, Respondent's decision to intercept Petitioner’s federal income tax return is **REVERSED and a full refund shall be made.**

**SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.**

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**RONIT WALKER**  
**Administrative Law Judge**