BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

ANTHONY J. KENNEDY, **Petitioner,** **v.** **DHS, DIVISION OF CHILD SUPPORT SERVICES,** **Respondent.**	**Docket No.: 2117618** **2116718-OSAH-CSS-SDCFS-36-Schroer** **Agency Reference No.: 190015345**

FINAL DECISION

I. Introduction

Respondent, the Department of Human Services, Division of Child Support Services ("Respondent" or "CSS"), intercepted Petitioner's 2020 federal income tax refund to offset Petitioner's outstanding child support arrears. Petitioner appealed Respondent's action. The administrative hearing was held in Augusta, Georgia on April 9, 2021. Petitioner appeared and represented himself. Respondent was represented by Shantrice Abram, an employee of CSS. Having considered the evidence in the record and the legal arguments of the parties, the Court hereby **AFFIRMS** Respondent's decision.

II. Findings of Fact

1.

On or about July 23, 2015, the Superior Court of Columbia County, Georgia issued a Final Order and Judgment in Civil Action 2015-D-0304 ("2015 Final Order"). The 2015 Final Order required Petitioner to pay $400.00 per month in child support for his child, J[redacted], born in 2005, to the child's mother, Kristina Snyder. In addition, the 2015 Final Order found that Petitioner owed $10,000.00 to Ms. Snyder in overdue child support under a 2011 Final Order. The 2015

Final Order required Petitioner to pay the arrearage at the rate of $100.00 per month, beginning on August 1, 2015, for a total monthly payment of $500.00. (Testimony of CSS agent; Respondent's exhibits.)

2.

In August 2019, the Superior Court of Columbia County issued a Final Consent Order for Custody and Visitation in the case of Anthony Kennedy vs. Elizabeth Marie Kennedy, Civil Action No. 2019-EDR09731 ("2019 Consent Order"). The 2019 Consent Order gave Petitioner primary physical custody of another child, M[redacted] born in 2003, and ordered M[redacted]'s mother to pay child support to Petitioner in the amount of $381.00 per month. Currently, M[redacted] is seventeen years old and resides with Petitioner. (Testimony of Petitioner; Petitioner's Exhibit.)

3.

On May 11, 2020, the Superior Court of Columbia County issued an Order adopting Respondent's recommendation that Petitioner's monthly child support obligation toward J[redacted] remain unchanged at $400.00 per month ("2020 Order"). In addition, the Superior Court found that as of February 29, 2020, Petitioner's arrears balance was $7,781.62 and ordered Petitioner to pay $50.00 per month toward the arrears beginning on June 1, 2020, for a new total monthly obligation of $450.00. (Testimony of CSS agent, Petitioner; Respondent's exhibits.)

4.

According to Respondent's records, Petitioner paid his required monthly support obligation and arrears amount in February, March, and April 2020, and his arrears balance as of the end of April 2020 was $7,581.62.[1] In May 2020, Respondent intercepted Petitioner's federal

[1] According to Petitioner's testimony at the hearing, he has not missed a monthly payment since the Final Order was entered in 2015.

stimulus payment under the CARES Act, a portion of which was attributable to M as a qualifying child in Petitioner's household.[2] Although Petitioner initially appealed this action, he withdrew his appeal and the stimulus money was applied to pay down the arrearage owed to J 's mother, Ms. Snyder.[3] (Testimony of CSS agent, Petitioner; Respondent's exhibits.)

5.

As of February 2021, Petitioner's arrears balance for J was $5,350.68. On or about March 4, 2021, CSS intercepted a 2020 federal tax refund owed to Petitioner in the amount of $1,839.00 and proposed to use this money to pay toward his arrears balance for J. Petitioner appealed this action, and CSS is holding the intercepted funds in escrow. At the administrative hearing, Petitioner argued that the portion of his 2020 tax refund that is attributable to M namely, the approximately $600.00 tax credit Petitioner testified that he was entitled to as a custodial parent of a seventeen-year-old dependent – should not be subject to intercept to pay toward his arrears for J[4] Petitioner did not cite any legal authority for this argument, but he believes that it is not fair to offset money attributable to one child to pay past-due support for another child. (Testimony of CSS agent, Petitioner.)

III. Conclusions of Law

1.

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

[2] The Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted in March 2020 and provided qualifying individuals with a recovery rebate of up to $1,200.00 plus up to $500 for each qualifying child.

[3] Respondent's intercept of the stimulus payment in May 2020 is not the subject of this appeal.

[4] CSS does not have access to the income tax returns of non-custodial parents and is not given detailed information from the Internal Revenue Service or the U.S. Department of Revenue regarding the reason why a non-custodial parent is entitled to a tax refund. In addition, Petitioner did not tender a copy of his 2020 tax return, although he referred to it during the hearing. Consequently, as discussed *infra*, the exact amount of the child tax credit is not known.

2-.21.

2.

"The Internal Revenue Code and the Social Security Act direct the Secretary of the Treasury to 'intercept' certain tax refunds payable to persons who have failed to meet child-support obligations." Sorenson v. Secretary of Treasury, 475 U.S. 851, 852-53 (1982). See 26 U.S.C. § 6402(c);[5] 42 U.S.C. § 664(a).[6] The intercept law was originally enacted forty years ago as part of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, § 2331, 95 Stat. 860. For purpose of the federal intercept provisions, past due support is defined as "the amount of delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child (whether or not a minor), or of a child (whether or not a minor) and the parent with whom the child is living." 42 U.S.C. § 664(c). See also Ga. Comp. R. & Regs. 290-7-1-.03(c) ("arrearage" is "an amount of money calculated by the Department or a court representing the total amount of support owed less the actual amount of support paid by an obligor). Under federal regulations, state child support agencies must first

[5] "The amount of the overpayment to be refunded to the person making the overpayment shall be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act [42 USC § 664]) owed by that person of which the Secretary has been notified by a State in accordance with section 474 of such act. The Secretary shall remit the amount by which the overpayment is so reduced to the State collecting such support and notify the person making the overpayment that so much of the overpayment as was necessary to satisfy his obligation for past-due support has been paid to the State as past due support under section 464 of the Social Security Act [42 USC § 664] before any other reductions allowed by law." Id.

[6] "Upon receiving notice from a State agency administering a plan approved under this part . . . that a named individual owes past-due support which such State has agreed to collect . . . , and the State agency has sent notice to such individual [regarding the steps to contest the intercept for past-due support], the Secretary of the Treasury shall determine whether any amounts, as refunds of federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individuals of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency. . . . The State agency shall . . . distribute such amount to or on behalf of the child to whom the support was owed . . . ." Id.

verify the accuracy of the past-due support before submitting it to the Internal Revenue Service for intercept. 45 C.F.R 303.72(a)(5). Once verified, state agencies are authorized to offset a person's federal tax refund if the verified amount of past-due support is at least $150.00 in a public assistance case and at least $500.00 in a non-public assistance case. 45 C.F.R 303.72(a)(2), (3). However, the right to apply the offset is subject to the taxpayer's right to "contest the State's determination that past-due support is owed or the amount of the past-due support." 42 U.S.C. § 664(3)(A).

3.

In this case, Petitioner does not dispute that he owed over $5,000.00 in arrears to J[redacted]'s mother as of February 2021 and that a portion of his 2020 federal tax refund was subject to intercept. However, he argued that the portion of his refund that is attributable to his daughter M[redacted] should be exempt from offset to pay down the arrears he owes for J[redacted]. As set forth above, Petitioner did not tender a copy of his 2020 federal tax return into evidence. Consequently, it is not altogether clear how Petitioner calculated a $600.00 tax credit attributable to seventeen-year-old M[redacted]. Nevertheless, under the Internal Revenue Code, taxpayers may receive partial credit for a dependent child over the age of seventeen in the amount of $500.00, which the Court will assume, *arguendo*, is the primary basis of Petitioner's argument in this case. See 26 U.S.C. § 24(c) and (h)(4)(A); 26 U.S.C. § 152.[7]

[7] The Internal Revenue Code includes special rules for taxable years 2018 through 2025, which allow a partial credit for certain dependents who are over seventeen, but otherwise meet the definition of "qualifying child" under 26 U.S.C. 152. Specifically, 26 U.S.C. § 24(h)(4) allows a $500.00 credit for each such dependent. In addition, although it is not possible to determine without seeing Petitioner's tax return, it appears that the partial credit Petitioner received in 2020 for M[redacted] was a "non-refundable" tax credit under the Internal Revenue Code. See 26 U.S.C. § 24(h)(4)(A) & 24(a) (the $500.00 partial credit is an increase to the credit determined under subsection (a), which is a non-refundable credit, as opposed to the additional child tax credit under subsection (d), which is refundable under certain circumstances). That is, the partial credit can be used to reduce Petitioner's outstanding tax liability, but does not result in a refund to the taxpayer. See, e.g., In re: Parisi, 2010 Bankr. LEXIS 1530 (E.D.N.Y. 2010) (holding that the child tax credit became part of the taxpayer's bankruptcy estate and was not exempt as property of the child). Cf. R.V. v. Mnuchin, 2020 U.S. Dist. LEXIS 107420 (D. Md. 2020) (distinguishing the holding in Parisi from the question of whether children of undocumented parents have Article III standing to contest the denial of economic impact

4.

As an initial matter, taxpayers who are eligible for tax "refunds" as a result of a child tax credit "do not actually 'overpay' their income taxes, at least in the traditional sense of the word." Sarimiento v. U.S., 678 F.3d. 147, 152 (2nd. Cir. 2012). Rather, the additional child tax credit, like the earned income tax credit, creates a "legal fiction" that the recipients make "overpayments" on their taxes, "thereby entitling them to the resulting tax 'refund,' as a mechanism for achieving certain social policy goals." Id. In 1986, the United States Supreme Court considered whether the intercept provisions discussed above applied to refunds attributable to the earned income tax credit, which was "enacted to reduce the disincentive to work caused by the imposition of social security taxes on earned income . . . , to stimulate the economy . . . , and to provide relief for low-income families." Sorenson, 475 U.S. at 851.[8] Notwithstanding these laudable goals, the Supreme Court held that earned income tax credit payments may be intercepted under Section 6402(c) to offset past-due child support. Id. at 859. In reaching this decision, the Supreme Court acknowledged that both the intercept program, which was intended to address "the epidemic of nonsupport," and the earned income tax credit program had important objectives; however, "the ordering of competing social policies is a quintessentially legislative function," and Congress directed that "*any* overpayment to be refunded . . . shall be reduced by the amount of any past-due support," without distinguishing overpayments due to the earned income tax credit or any other tax credit program. Id. at 863-64 (emphasis in original) (citing 26 U.S.C. §§ 6401, 6402). See also

payments for qualified children under the CARES Act). However, just as the court held in Parisi, the difference between the refundable or non-refundable child tax credit is not relevant to this case because the child tax credit is not held in trust by the parent for the benefit of the child and is not exempt from the parent's creditors. Id. at *5 - *6.

[8] For a discussion of the history and purpose of the child tax credit, see Hardy v. Fink, 787 F.3d 1189 (8th Cir. 2015) (the initial goal of the child tax credit program was to reduce the tax burden on families with dependent children and promote family values, but subsequent amendments to the program overwhelmingly benefit low income families and thus constitutes a "public assistance benefit" for purposes of a state law exemption in a bankruptcy case).

Sarmiento v. U.S., 68 F.3d at 152 (finding Sorenson applicable to question relating to both additional child tax credit and earned income tax credit).

5.

Petitioner has not cited any legal authority that exempts the portion of his 2020 federal tax refund that was attributable to the child tax credit from intercept for past-due child support, and this Court is not aware of any such authority. Accordingly, the Court concludes that Respondent was authorized to intercept Petitioner's entire 2020 federal tax refund in the amount of $1,839.00 and apply it toward his outstanding arrears.

IV. Decision

For the aforementioned reasons, CSS's interception and offset of Petitioner's 2020 federal income tax refund is hereby **AFFIRMED**.

SO ORDERED, this 30th day of April, 2021.

Kimberly W. Schroer
Administrative Law Judge

NOTICE OF FINAL DECISION

Attached is the Final Decision of the administrative law judge. The Final Decision is not subject to review by the referring agency. O.C.G.A. § 50-13-41. A party who disagrees with the Final Decision may file a motion with the administrative law judge and/or a petition for judicial review in the appropriate court.

Filing a Motion with the Administrative Law Judge

A party who wishes to file a motion to vacate a default, a motion for reconsideration, or a motion for rehearing must do so within 10 days of the entry of the Final Decision. Ga. Comp. R. & Regs. 616-1-2-.28, -.30(4). All motions must be made in writing and filed with the judge's assistant, with copies served simultaneously upon all parties of record. Ga. Comp. R. & Regs. 616-1-2-.04, -.11, -.16. The judge's assistant is Devin Hamilton - 404-657-2800; Email: devinh@osah.ga.gov; Fax: 404-657-2800; 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303.

Filing a Petition for Judicial Review

A party who seeks judicial review must file a petition in the appropriate court within 30 days after service of the Final Decision. O.C.G.A. §§ 50-13-19(b), -20.1. Copies of the petition for judicial review must be served simultaneously upon the referring agency and all parties of record. O.C.G.A. § 50-13-19(b). A copy of the petition must also be filed with the OSAH Clerk at 225 Peachtree Street NE, Suite 400, South Tower, Atlanta, Georgia 30303. Ga. Comp. R. & Regs. 616-1-2-.39.