

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

A [REDACTED] D [REDACTED] [REDACTED],
Petitioner,

v.

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

Docket No.: [REDACTED]
OSAH-CSS-OTHER-121-Schroer

Agency Reference No.: [REDACTED]



FINAL DECISION

Respondent, the Department of Human Services, Division of Child Support Services (“Respondent” or “CSS”), intercepted four payments from the U.S. Department of the Treasury: (1) Petitioner’s federal income tax refund for tax year 2020; (2) the stimulus payment under the Coronavirus Aid, Relief, and Economic Security (CARES) Act; the payment under the Consolidated Appropriations Act of 2021 (“CAA”); and the American Rescue Plan Act of 2021. Respondent proposes to apply all four payments toward Petitioner’s outstanding child support arrears. Petitioner appealed Respondent’s action, and a hearing was scheduled at Augusta Richmond County Judicial Center, Augusta, Georgia on July 6, 2021. Petitioner appeared and represented himself. Respondent was represented by Agent Laketa Jones, Augusta DCSS. The hearing record was held open for Respondent to provide a Case Detail Report of individual payments made by Petitioner or indirectly to his children’s support accounts. That report was received on July 10, 2021 and admitted as Respondent After-Acquired Exhibit 2. The hearing record was thereupon closed.

For the reasons set forth below, Respondent’s action is hereby **AFFIRMED** for intercept of Petitioner’s 2020 federal income tax refund and the CARES Act stimulus payment but **REVERSED** for the intercept of Petitioner’s CAA and American Rescue Plan payments. ¹

¹ For the sake of brevity and following common usage, the CARES Act, CAA, and American Rescue Plan payments are sometimes referred to generically in this Decision as “stimulus payments.”

II. Findings of Fact

1.

Petitioner was legally obligated to pay child support of \$245.00 per month for his child by J [REDACTED] D [REDACTED]. That child emancipated in August 2018, and his obligation was reduced to \$125.00 to repay an arrearage of unpaid child support. He is currently obligated to pay child support of \$459.00 per month to L [REDACTED] C [REDACTED]. (Testimony of Agent Jones; Respondent Exhibit 1).

2.

Respondent has been collecting payment by Petitioner on both child support orders. As of June 1, 2021, Petitioner owed past-due support to Ms. C [REDACTED] of \$4,880.69, and \$619.46 to Ms. D [REDACTED]. (Testimony of Agent Jones; Respondent Exhibit 1).

3.

Petitioner did not file a federal income tax return in 2019, and he did not receive payment under the CARES Act, CAA, or American Rescue Plan before he filed his 2020 return. After Petitioner filed his 2020 federal tax return, he was eligible for a CARES Act payment of \$1,200; CAA payment of \$600; and American Rescue Plan payment of \$1,400, for a total COVID pandemic-related payment of \$3,200. Petitioner recalled that his federal tax refund was “\$2,000 and some change,” but he did not know the precise amount. (Testimony of Petitioner and Agent Jones; Case Detail Report, admitted as Respondent’s after-acquired Exhibit 2).

4.

According to the Case Detail Report, Petitioner’s federal tax and stimulus payments were intercepted by Respondent on or about May 27, 2021, in the total amount of \$5,643.09. Petitioner appealed, and a hearing was held to determine whether Petitioner is owed a refund for any of the federal payments taken by Respondent. These funds are held in escrow pending the outcome of this appeal. ² (Respondent After-

² The ALJ presumes that the Petitioner’s federal income tax refund was at least \$2,443.00, the difference between the Petitioner’s federal tax refund and stimulus payments and the total amount intercepted by Respondent. The hearing record is

Acquired Exhibit 2).

5.

Respondent proposes to release \$619.46 to Ms. D■■■■, which will completely pay-off Petitioner's debt, and \$4880.69 to Ms. C■■■■. Payment to Ms. C■■■■ will bring his debt to her for past-due support to \$0.00 as of June 1, 2021, but this does not take into consideration any underpayments of child support since that date. Petitioner expressed his desire to have his federal tax refund and stimulus payments returned, even though as a result he would continue to owe Ms. C■■■■ and/or Ms. D■■■■ for past-due child support. (Testimony of Agent Jones; testimony of 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. Id. at 616-1-2-.21.

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 C.F.R. § 303.72. Federal offset is authorized on a welfare case (i.e., a case where the custodial parent received TANF benefits) if there are child support arrears due of at least \$150.00 and is authorized on a non-welfare case if there are child support arrears due of at least \$500.00. 45 C.F.R. § 303.72(a)(2), (3)(ii). Petitioner's case is a non-welfare case, and his child support arrears exceeded \$500.00 at the time of the intercepts.

3.

A stimulus payment received under the CARES Act is considered a tax credit; however, it does not affect the taxpayer's 2020 income tax liability. 116 P.L. 136, Sec. 2201 (a) (enacted March 27, 2020); see CONG. RES. SERVICE, CHILD SUPPORT FEDERAL TAX OFFSET OF CARES ACT ECONOMIC IMPACT PAYMENTS,

unclear whether part of the federal tax refund or stimulus payments

<https://crsreports.congress.gov/product/pdf/IN/IN11322> (last updated Apr. 24, 2020). Such payments cannot be intercepted or offset for past due debts to federal agencies, past due state income tax debt, or unemployment compensation debt. 116 P.L. 136, Sec. 2201 (d); see CONG. RES. SERVICE, <https://crsreports.congress.gov/product/pdf/IN/IN11322>. However, they are not exempt from offset or intercept for past-due child support. 116 P.L. 136, Sec. 2201 (d); see CONG. RES. SERVICE, <https://crsreports.congress.gov/product/pdf/IN/IN11322>. In fact, the Office of Child Support Enforcement and the Department of the Treasury have confirmed that these payments are subject to child support enforcement tax offset procedures. CONG. RES. SERVICE, <https://crsreports.congress.gov/product/pdf/IN/IN11322>. Therefore, a federal stimulus payment is treated the same as a federal income tax refund and may be intercepted by Respondent to repay a valid debt for past-due child support.

4.

Payments under the CAA and American Rescue Plan, however, are treated differently than a CARES Act payment under the federal law authorizing these payments. 116 P.L. 260 (December 27, 2020), the enabling act for the CAA, states that CAA payments:

...shall not be-

...

(B) Subject to reduction or offset pursuant to subsection (c), (d), (e), or (f) of Section 6402 of the Internal Revenue Code of 1986.

Similarly, 117 P.L. 2 (March 11, 2021), the enabling act for the American Rescue Plan, states that these payments:

...shall not be-

(A) Subject to reduction or offset pursuant to subsection (c), (d), (e), or (f) of section 6402 of the Internal Revenue Code of 1986 or any similar authority permitting offset....

26 U.S. Code § 6402 (c) refers to offset of tax refunds (called “overpayments” by the statute) for past-due support. Thus, Respondent is not authorized under federal law to intercept either the CAA or American

Rescue Plan payments to apply to a child support obligor's arrearage for child support.

IV. Decision

CSS's action offsetting the Petitioner's federal income tax refund and CARES Act stimulus payment is **AFFIRMED**. Accordingly, Respondent is authorized to retain these funds in partial satisfaction of Petitioner's child support arrears. It is further Ordered, however, that Petitioner's CAA and American Rescue Plan payments totaling \$2,000 are not subject to offset, and Respondent's action to intercept these payments is **REVERSED**. Respondent shall refund \$2,000 to Petitioner.

SO ORDERED, this 2nd day of August, 2021.



**M. Patrick Woodard, Jr.
Administrative Law Judge**

