

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

G [REDACTED] W [REDACTED],
Petitioner,

v.

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

Docket Nos.: [REDACTED], [REDACTED]
[REDACTED]-OSAH-CSS-SDCFS-121-Schroer
[REDACTED]-OSAH-CSS-SDCFS-121-Schroer

Agency Ref. Nos.: [REDACTED]

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 August 3, 2021. Petitioner was present and represented by his attorney, Willie Saunders, Esq. Respondent’s agent, Shameka Henderson, and Michael Spence, a Special Assistant Attorney General, were present and represented 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.

Petitioner is obligated to pay child support for two of his children under two separate orders. First, on June 19, 2019, the Superior Court of [REDACTED] County, Georgia issued a Final Order in DHS, ex. rel., G [REDACTED] A. R [REDACTED] v. G [REDACTED] W [REDACTED] and N [REDACTED] S. R [REDACTED], Civil Action [REDACTED]. (“R [REDACTED] Final Order”). The R [REDACTED] Final Order required Petitioner to pay

\$152.00 per month in child support to N [REDACTED] R [REDACTED] for Petitioner's son, G [REDACTED]. In addition, the R [REDACTED] Final Order found that Petitioner owed \$3,459.48 to Ms. R [REDACTED] in overdue child support under a July 2005 order. The R [REDACTED] Final Order required Petitioner to pay the arrearage at the rate of \$5.00 per month. As of May 2021, Petitioner was in arrears on this case in the amount of \$3,742.21. (Stipulation of parties; Respondent's exhibits.)

2.

The Superior Court of [REDACTED] County, Georgia issued a second order on June 19, 2019 in the case of DHS, ex. rel. T [REDACTED] Z [REDACTED] D [REDACTED] v. G [REDACTED] W [REDACTED] and C [REDACTED] L. D [REDACTED], Civil Action [REDACTED] ("D [REDACTED] Order"). The D [REDACTED] Order reduced the amount of child support Petitioner was obligated to pay to C [REDACTED] D [REDACTED] for his daughter T [REDACTED] from \$246.00 per month to \$146.00 per month. In addition, the D [REDACTED] Order found that Petitioner owed \$19,745.99 to Ms. D [REDACTED] in overdue child support under a March 2009 order. The D [REDACTED] Order required Petitioner to pay the arrearage at the rate of \$5.00 per month. As of May 2021, Petitioner was in arrears on this case in the amount of \$18,307.18. (Stipulation of parties; Respondent's exhibits.)

3.

Petitioner has a third child, a daughter, N [REDACTED] W [REDACTED], who was born in 2014 and is in his custody. On May 10, 2021, Petitioner filed his 2020 federal income tax return. He identified N [REDACTED] as his dependent and claimed an additional child tax credit of \$1,012.00. After accounting for this credit and all other deductions and credits, Petitioner claimed a refund on his 2020 federal income taxes in the amount of \$2,744.00. (Stipulation of parties; Petitioner's exhibit.)

4.

In June 2021, Respondent intercepted Petitioner's federal tax refund and notified Petitioner of its intent to apply the refund to his outstanding arrears under the R [REDACTED] Final Order and the

D■■■■ Order. Specifically, after deducting an administrative fee, CSS proposed paying Ms. D■■■■ approximately \$2,260.00 from the refund and Ms. R■■■■ approximately \$463.00. Petitioner appealed this proposed action, and CSS is holding the intercepted funds in an escrow account. At the administrative hearing, Petitioner argued that the portion of his 2020 tax refund that is attributable to N■■■■—namely, the \$1,012 additional tax credit—should not be subject to intercept to pay toward his arrears for the other two children. Petitioner argued that it is not fair to offset money attributable to one child to pay past-due support for other children. Although Petitioner acknowledged CSS’s general right to intercept tax refunds to pay past-due child support, Petitioner argued that CSS was not required to do so under the law. Rather, Petitioner interpreted CSS’s regulations to give the agency discretion to use intercept enforcement remedies and argued that the agency should not do so in this case. See Ga. Comp. R. & Regs. 29-7-1-.08(b)(1).¹ (Stipulation of parties; Petitioner’s exhibits; Respondent’s exhibits.)

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-.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.

¹ CSS rules provides that “[i]ntercept enforcement remedies **may** be used for cases which involve a delinquent court or administrative ordered amount of child support and the State has an assignment of rights to support” Ga. Comp. R. & Regs. 290-7-1-.08(b)(1) (emphasis added).

§ 6402(c);² 42 U.S.C. § 664(a).³ 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 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

² “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.

³ “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.

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 \$500.00 in arrears as of May 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 N [REDACTED] should be exempt from offset to pay down the arrears he owes for his other children. As an initial matter, the Court notes that 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 851.⁴ 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

⁴ 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).

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 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).


4.

Based on the above authority, the Court concludes that the portion of Petitioner’s 2020 federal income tax refund attributable to the additional child tax credit is not exempt from federal intercept provisions. Moreover, although CSS’s regulations state that the agency “may” use intercept enforcement remedies to collect past due child support, the federal law provides that the agency “shall, subject to paragraph (3)(B),⁵ distribute such amount to or on behalf of the child to whom the support is owed.” 42 U.S.C. § 664(a)(2)(A). Consequently, the Court concludes that CSS does not have discretion to exempt a portion of Petitioner’s tax refund from intercept and is authorized to apply the entire refund to Petitioner’s past due child support under the R [REDACTED] Final Order and the D [REDACTED] Order.

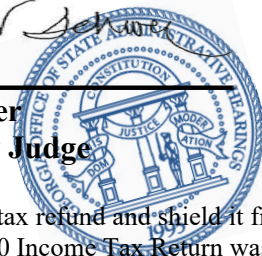
IV. Decision

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

SO ORDERED, this 9th day of September, 2021.



Kimberly W. Schroer
Administrative Law Judge



⁵ Subsection 3(b) allows a non-obligated spouse to claim their share of a joint income tax refund and shield it from intercept for child support owed by the other spouse. However, because Petitioner’s 2020 Income Tax Return was an individual return, not a joint return, this exception to intercept does not apply.