

IN THE OHIO DEPARTMENT OF HUMAN SERVICES

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MAY 30 1995 3P.

In Re:)	CASE NO. 5014912223
)	
APPEAL OF)	APPEAL NO. 506804
BRENDA CALDWELL)	
267 Fairview Road)	
Bidwell, Ohio 45614)	DOCKET NO. 95-SHCO-218
)	
REPRESENTED BY: TIMOTHY FORAN)	
Southeastern Ohio Legal Services)	
36 South Congress Street)	
Athens, Ohio 45701)	

Administrative Appeal Decision

By letter received May 12, 1995, Appellant, through Representative, has requested an Administrative Appeal of a state hearing decision rendered April 28, 1995.

The hearing record indicates Appellant receives Aid for Dependent Children (ADC) through the Gallia County Department of Human Services (Agency) and should be receiving child support benefits through the Gallia County Child Support Enforcement Agency (CSEA). Appellant's ex-husband was ordered to pay \$108.33 as monthly child support. No support has been received in this case. Another woman in the county with the identical name receives child support. Both women were assigned the same CRIS-E number and Appellant received a \$50 child support disregard for the months of September, 1994, through January, 1995. March 9, 1995, CSEA discovered the error and requested Appellant discuss the erroneous payments at a meeting April 3, 1995. CSEA mailed notice March 9, 1995, indicating Appellant retained support payments of \$250 to which she was not entitled. CSEA acknowledged the letter was correct in the amount but was not accurate in the reason for the request for repayment.

Appellant asserted the child support disregard payments indicated the CSEA had located the obligor after thirteen years and had begun to receive support payments. Appellant asserted she should not be responsible for repayment on an error of CSEA. Representative asserted repayment would be a hardship for Appellant and asserted the

notice for repayment was improper, as the notice refers to direct payments of support that Appellant did not receive. Appellant should be exempt from repayment as Appellant did nothing to cause the overpayment and has not received proper notice.

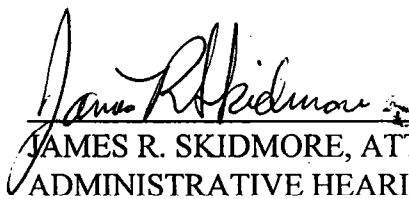
The hearing officer determined that, although the CSEA caused the error, Appellant remains responsible for repayment; and that although the notice was not precise for reasons, the amounts and dates were correct and a conference was requested to discuss the reason, therefore, the CSEA was correct to propose recovery of the amount to which Appellant was not entitled.

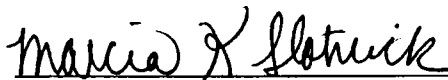
On appeal Representative asserts essentially that Appellant did not receive adequate notice regarding the overpayment and that the hearing officer incorrectly relied upon the fact that Appellant chose not to appear for a requested conference to explain the overpayment.

The threshold issue is whether the \$250; that Appellant acknowledges she received, is a IV-D overpayment. Ohio Administrative Code (OAC) 5101:1-29-78 provides that if an individual or assistance unit is receiving public assistance and child support is paid directly to and retained by the assistance unit it may be considered a IV-D overpayment if certain conditions are met, if the payment is made directly to the obligee in fulfillment of an order established or modified prior to December 1, 1986, or if the payment is "sent to the obligee erroneously by the CSEA" regardless of the date of the order. A CSEA is responsible for recovering a IV-D overpayment. Clearly, the obligor did not submit a support to Appellant that she then retained, as the notice relied upon states. Nor did CSEA erroneously send a payment to Appellant. Rather, Agency, acting in accordance with information received from CSEA, issued notices to Appellant that she would receive the child support disregards, and then issued the disregard payments. OAC 5101:1-23-221 provides guidance for the calculation and distribution of the child support disregard payment. Any new or modified support order with an effective date on or after December 1, 1986, is required to be paid through the CSEA. Paragraph (F) requires submission by the CSEA of child support information to the department which then issues the appropriate payment to the assistance group. The

department provides information regarding support disregard payments to the local CDHS that then issues notices to the assistance group. That is clearly what happened in this case. Paragraph (I) requires the CDHS to be "responsible for processing hearing requests and attending subsequent hearings which result from the issuance (or nonissuance) and/or determination of the amount of child support disregard payments." That is what should have happened for Appellant yet did not. It is clear to this Administrative Hearing Examiner that the wrong agency processed this action, and the overpayment, if one exists, is the responsibility of Agency as a IV-A overpayment rather than CSEA. CSEA was incorrect to propose a IV-D overpayment as the monies received were not the result of direct payment to Appellant, but were payments made by the department.

Therefore, the state hearing decision is REVERSED. CSEA is advised to cease all efforts to collect the amount incorrectly identified as a IV-D overpayment. The Agency is further directed to send the Appellant written notice of the action taken via an ODHS 4074, 4065, 7334, 7401, 4071 or other appropriate state form as a result of this decision. The Agency is to attach a copy of this notice to the ODHS 4068 State Hearing Compliance form.


 JAMES R. SKIDMORE, ATTORNEY AT LAW
 ADMINISTRATIVE HEARING EXAMINER


 MARCIA K. SLOTNICK, ATTORNEY AT LAW
 CHIEF ADMINISTRATIVE HEARING EXAMINER
 OFFICE OF LEGAL SERVICES ON BEHALF OF
 ARNOLD R. TOMPKINS, DIRECTOR

DATE OF ISSUANCE 5-24-95

This Administrative Appeal Decision is the final administrative decision on your case from the Ohio Department of Human Services.

- cc: Director, Gallia County Department of Human Services
- Director, Gallia County Child Support Enforcement Agency
- District Director, Columbus District Office
- Terry Kreachbaum
- Bureau of Child Support
- Appellant and Representative