

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
ONE JUDICIARY SQUARE
441 4th Street, NW
Washington, DC 20001-2714
TEL: (202) 442-9094
FAX: (202) 442-4789

REGINALD NESBY
Petitioner,

v.

DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL
CHILD SUPPORT SERVICES DIVISION
Respondent.

Case No.: 2010-OAG-00017

FINAL ORDER

I. Summary of this Final Order

This Final Order grants the Child Support Services Division's (CSSD) Motion to Dismiss for Lack of Jurisdiction and dismisses this case.

II. Procedural History

On October 1, 2010, Petitioner Reginald Nesby requested a hearing to appeal CSSD's interception of his lottery winnings. Consequently, on October 6, 2010, this administrative court issued a Hearing Notice and Order, scheduling a hearing on November 1, 2010.

On October 27, 2010, CSSD filed a Motion to Dismiss for Lack of Jurisdiction.

On November 1, 2010, the hearing was convened as scheduled. Mr. Nesby appeared and represented himself. Adrienne Day, Section Chief for Program Operations at CSSD, appeared on behalf of CSSD. At the onset of the hearing, Mr. Nesby stated that he had not received a copy

of CSSD's Motion to Dismiss for Lack of Jurisdiction. He then was provided a copy. Following my inquiry as to whether he would like a continuance for time to review the Motion and to seek legal counsel, Mr. Nesby requested that the hearing be continued to a date in November 2010. Ms. Day did not oppose Mr. Nesby's request. With the agreement of the parties, I then continued the hearing to November 16, 2010.

On November 16, 2010, the re-scheduled hearing proceeded as scheduled. Mr. Nesby appeared and represented himself. Ms. Day appeared again on behalf of CSSD. I then heard testimony and argument from both parties on CSSD's Motion to Dismiss.

III. The Undisputed Facts

Petitioner was ordered by D.C. Superior Court to pay child support in Case No. P 0231-84. At some point, he became delinquent in his child support obligations. In August 2009, he entered into an agreement with CSSD, under its Fresh Start program. Under that agreement, Petitioner paid a lump sum of \$1,000, and agreed to make timely payments of \$125 toward the child support arrears. Petitioner made the payments as agreed.

In October 2010, Petitioner won \$1,700 through the D.C. Lottery. Upon cashing in his winning lottery tickets at a D.C. Lottery office, the winnings were intercepted by the D.C. Lottery for CSSD, due to child support arrears. The D.C. Lottery advised Petitioner, in writing, that he could file a written appeal with CSSD if he believed he did not owe child support or that he owed less than the amount taken from his lottery prize. Petitioner went to CSSD's office to file a written appeal.

At CSSD's office, Petitioner was directed to OAH to file an appeal. Acting on this direction, Petitioner filed a request for a hearing at OAH on October 1, 2010. Petitioner has not received any other information or direction from CSSD concerning his rights to challenge the interception.

Respondent did not anticipate the interception as he was in compliance with the terms of his Fresh Start program agreement and believed that his compliance barred CSSD from taking any collection against him for the child support arrears.

IV. The Motion to Dismiss

In support of its Motion to Dismiss, CSSD argues that OAH lacks jurisdiction to hear this case because it does not involve an Order of Condemnation and seizure of funds from a financial institution. In opposition, Petitioner argues that CSSD directed him to appeal at OAH; that this administrative court should allow him the process due him to challenge the interception; and, that the interception was in violation of his Fresh Start agreement.

V. Analysis

OAH does not have authority to hear Petitioner's challenge to the interception of his lottery winnings. OAH's jurisdiction over child support enforcement cases is limited to those child support cases involving driver's license and car registration denials, refusals to renew and revocation cases, and financial asset seizure cases. D.C. Official Code §§ 46-225.01(a) and 226.03(a)(7)(B); 29 DCMR 8101 *et seq.*; and, Memorandum of Understanding Between the Office of Administrative Hearings and the Office of the Attorney General, Child Support Services Division (May 28, 2008). For this reason, CSSD's Motion to Dismiss must be granted.

Because OAH lacks jurisdiction to hear this case, I cannot consider Petitioner's arguments.

My dismissal of Petitioner's challenge to the interception does not mean that Petitioner is without redress. Nor does CSSD's failure to inform and allow Petitioner an appeal process mean that Petitioner has no avenue to challenge the interception of his lottery winnings. Petitioner may have appeal challenges through CSSD or Superior Court and would be well advised to seek legal counsel immediately to advance those challenges.

VI. Conclusion

For the foregoing reasons, CSSD's Motion to Dismiss is granted.

Therefore, it is, this 24th day of November 2010:

ORDERED, that CSSD's Motion to Dismiss for Lack of Jurisdiction and Points and Authorities in Support Thereof is **GRANTED** and this case is **DISMISSED WITHOUT PREJUDICE FOR LACK OF JURISDICTION**; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

Date: November 24, 2010

/s/
Elizabeth Figueroa
Administrative Law Judge

