

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICHAEL A. CHANG,)
)
 Petitioner,)
)
 vs.) Case No. 01-3852
)
 DEPARTMENT OF REVENUE, CHILD)
 SUPPORT ENFORCEMENT PROGRAM,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A telephone hearing between Tallahassee, Florida, and Wewahitchka, Florida, was held in this case on December 12, 2001, before the Division of Administrative Hearings by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: Micheal A. Chang, pro se
DC #T18277
699 Ike Steele Road
Wewahitchka, Florida 32465

For Respondent: Scott Edmonds, Esquire
Department of Revenue
Post Office Box 8030
Tallahassee, Florida 32314

STATEMENT OF THE ISSUES

The issues are whether Petitioner is delinquent in his child support payments; and if so, whether Respondent may levy

the funds from Petitioner's bank account pursuant to Section 409.25656, Florida Statutes.

PRELIMINARY STATEMENT

On March 27, 2001, Respondent Department of Revenue, Child Support Enforcement Program (Respondent), issued a Notice of Intent to Levy to Petitioner Michael A. Chang (Petitioner). The notice advised Petitioner that Respondent intended to levy funds from Petitioner's account at Tampa Bay Federal Credit Union pursuant to Section 409.25656, Florida Statutes.

Petitioner filed an Amended Petition for Administrative Hearing on August 9, 2001. Respondent transmitted this petition to the Division of Administrative Hearings on October 2, 2001.

On October 26, 2001, the undersigned issued a Notice of Hearing, scheduling the hearing for December 12, 2001. Because Petitioner is incarcerated, the parties agreed that Petitioner would appear at the hearing by telephone from Wewahitchka, Florida, and that the undersigned, Respondent, and any witnesses would appear in Tallahassee, Florida.

On or about November 19, 2001, Petitioner filed a Voluntary Reciprocal Disclosure. Among other documents, a copy of Petitioner's responses to Respondent's First Request for Admissions was attached to the Voluntary Reciprocal Disclosure.

Petitioner also filed a Verified Motion to Suspend Child Support and to Set Prospective Purge Amount on November 19,

2001. Respondent filed a response in opposition to the motion on November 27, 2001. The undersigned denied the motion by Order dated November 28, 2001.

On November 30, 2001, Respondent filed a Motion for Summary Final Order. During the hearing Respondent requested that the motion be considered as a request for dismissal based on a lack of disputed issues of material fact. For the reasons set forth below, this motion was granted during the hearing.

On December 10, 2001, Respondent filed a Motion for Attorney's Fees and Costs. This motion was denied during the hearing.

When the hearing commenced, Petitioner stated that he did not object to Respondent's levy of funds in the amount of \$53.03 from Petitioner's account at Tampa Bay Federal Credit Union. Petitioner agreed that the case could be dismissed and remanded to Respondent for the entry of a final order. No testimony was presented and no exhibits were offered by either party.

The parties did not order a copy of the transcript. Under the circumstances, there was no need for either party to file proposed recommended orders.

FINDINGS OF FACT

1. It is undisputed that Petitioner's child support obligation is ongoing. He admits that his overall monthly obligation is \$312.00.

2. As of October 24, 2001, Petitioner's was in arrears on his child support obligation in excess of \$53.03. Petitioner has not made any payments toward his child support obligation since September 2000.

3. On March 20, 2001, Respondent issued a Notice of Freeze. This notice advised Tampa Bay Federal Credit Union that Petitioner had a past-due and/or overdue child support obligation and that any funds held by Tampa Bay Federal Credit Union in Petitioner's name were frozen pursuant to Section 409.25656, Florida Statutes. At that time, Petitioner had funds in the amount of \$53.03 in an account at Tampa Bay Federal Credit Union.

4. On March 27, 2001, Respondent issued a Notice of Intent to Levy. This notice advised Petitioner that Respondent intended to levy on the \$53.03 in Petitioner's account with Tampa Bay Federal Credit Union. According to the notice, Respondent intended to take the funds due to Petitioner's non-payment of child support.

5. During the hearing, Petitioner stated that he did not object to Respondent's action to levy on the funds held by Tampa Bay Federal Credit Union. Accordingly, there are no disputed issues of material fact.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.569, 120.57(1), and 409.25656(1), Florida Statutes.

7. When a person has a child support obligation that is past-due and/or overdue, Respondent has authority to levy upon any credits or personal property, including wages, belonging to the child support obligor and to levy on any debts owed to the child support obligor. Section 409.25656, Florida Statutes.

8. In this case, Petitioner admits that he is delinquent on his child support obligation by more than \$53.03. Any disputed amount of delinquency or arrears in excess of \$53.03 is irrelevant because \$53.03 is the maximum amount that can be levied in this garnishment action.

9. Petitioner does not object to Respondent's taking the \$53.03 from the Tampa Bay Federal Credit Union pursuant to Section 409.25656, Florida Statutes. Accordingly, the case does not present disputed issues of material fact.

10. All other issues raised by Petitioner in this proceeding are beyond the jurisdiction of the Division of Administrative Hearings. They should be properly disposed of by the Circuit Court in the Thirteenth Circuit, in and for Hillsborough County.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED:

That Respondent enter a final order directing that \$53.03 currently held at Tampa Bay Federal Credit Union be applied towards meeting the Petitioner's unpaid child support obligation.

DONE AND ENTERED this 13th day of December, 2001, in Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of December, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.