

BEFORE THE WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

MAILED
SHS-SEATTLE

MAY 06 2003

In Re:

ROGER KNIGHT

Noncustodial Parent.

Docket No. 03-2003-C-1839
D# 586476

FINAL ORDER

(Child Support-License Suspension)

OFFICE OF
ADMINISTRATIVE HEARINGS

RE-MAILED
SHS-SEATTLE

MAY 21 2003

OFFICE OF
ADMINISTRATIVE HEARINGS

A hearing was conducted by GAIL G. MAURER, Administrative Law Judge (ALJ), at Seattle, Washington, on April 16, 2003. The Noncustodial Parent, Roger Knight, appeared. The Department of Social and Health Services (DSHS), Division of Child Support (DCS) appeared through its representative, Tom Atkinson, Claims Officer.

FINDINGS OF FACT

1. DCS delivered a Notice of Noncompliance and Intent to Suspend Licenses (Notice) to the Noncustodial Parent (Mr. Knight) by personal service on March 11, 2003. In its Notice, DCS claims that Mr. Knight is in noncompliance with a superior court child support order, and that as of December 26, 2002, Mr. Knight owes a past-due child support debt of \$66,229.69, an amount that equals at least six months of child support arrears.

2. The child support order was entered in King County Superior Court under Cause No. 9-3-04471-1 July 11, 1991. It ordered Mr. Knight to pay \$851.76 per month. The order has not been modified and remains in effect. The last child support payment made by Mr. Knight was October 15, 2001. A total of \$5,000.00 was collected by DCS; \$851.76 was distributed to current support and \$4,148.24 was distributed to the Noncustodial Parent's support debt. No support has been paid subsequent to October 15, 2001. The total debt as of March 18, 2003 is \$69,636.73.

3. Six months of child support at \$851.76 totals \$5,110.56. Mr. Knight has accumulated a support arrearage totaling more than six months of child support payments.

CONCLUSIONS OF LAW

1. There is jurisdiction to hear this matter pursuant to Chapter 74.20A Revised Code of Washington (RCW) and Chapter 388-14A Washington Administrative Code (WAC).

2. This noncompliance proceeding is governed by RCW 74.20A.320(3):

(3) A responsible parent may request an adjudicative proceeding upon service of the notice described in subsection (1) of this section. The request for an adjudicative proceeding must be received by the department within twenty days of service. The request must be in writing and indicate the current mailing address and daytime phone number, if available, of the responsible parent. The proceedings under this subsection shall be conducted in accordance with the requirements of chapter 34.05 RCW. The issues that may be considered at the adjudicative proceeding are limited to whether:

- (a) The person named as the responsible parent is the responsible parent;
- (b) The responsible parent is required to pay child support under a child support order; and
- (c) The responsible parent is in compliance with the order.

The regulatory counterpart is WAC 388-14A-4530:

(1) An administrative hearing on a notice of noncompliance under WAC 388-14A-4505 is limited to the following issues:

- (a) Whether the person named in the child support order is the noncustodial parent (NCP);
- (b) Whether the NCP is required to pay child support under a child support order; and
- (c) Whether the NCP is at least six months in arrears.

(2) The administrative law judge (ALJ) is not required to calculate the outstanding support debt beyond determining whether the NCP is at least six months in arrears. Any debt calculation shall not be binding on the department or the NCP beyond the determination that there is at least six months of arrears.

(3) If the NCP requests a hearing on the notice, DCS stays the certification process until the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP.

The administrative hearing is limited by statute and rule to deciding only issues of whether a noncustodial parent is required to pay child support under a child support order and whether the parent is in compliance with that order. Mr. Knight has been ordered by superior court to pay \$851.76 per month child support. DCS claims that Mr. Knight is in noncompliance with the order. Noncompliance with a child support order is defined in RCW 74.20A.020(18):

(18) "Noncompliance with a child support order" for the purposes of the license suspension program authorized under RCW 74.20A.320 means a responsible parent has:

(a) Accumulated arrears totaling more than six months of child support payments;

(b) Failed to make payments pursuant to a written agreement with the department towards a support arrearage in an amount that exceeds six months of payments; or

(c) Failed to make payments required by a superior court order or administrative order towards a support arrearage in an amount that exceeds six months of payments.

Mr. Knight's child support arrears as of December 26, 2002 was \$66,229.69. Six months of child support payments is \$5,110.56. Mr. Knight's support arrears are substantially more than six months of support payments and he is in noncompliance with a child support order.

3. Mr. Knight asserts several defenses to application of the noncompliance laws to him:

(1) Inability to pay and fraud. Mr. Knight contends that he should not be subject to the noncompliance and license suspension laws because he was laid off from employment May 29, 1995 and has not had the ability to pay his child support. He states that he cannot enter into any repayment agreement as contemplated in RCW 74.20A.320(5) without committing fraud. According to Mr. Knight, if he knows he cannot pay, signing an agreement to repay would be fraud and a gross misdemeanor defined in RCW 9A.01.001. Inability to pay is not a defense to noncompliance. RCW 74.20A.320(3). Mr. Knight's concern about signing a repayment agreement under what he would characterize as fraudulent circumstances is without merit. The decision is his as to whether or not to sign a repayment agreement.

(2) Retroactive application of the noncompliance law. Mr. Knight contends that the noncompliance and license suspension provision of the law operates prospectively and does not apply to his order which was entered in 1991. The noncompliance and license suspension provision was enacted in Session Laws of 1997, Chapter 58, effective July 1, 1997. The legislature's intent in enacting the law was expressed as follows:

It is the intent of the legislature to provide a strong incentive for persons owing child support to make timely payments, and to cooperate with the department of social and health services to establish an appropriate schedule for the payment of any arrears. To further ensure that child support obligations are met, sections 801 through 890 of this act establish a program by which certain licenses may be suspended or not renewed if a person is one hundred eighty days or more in arrears on child support payments.

In the implementation and management of this program, it is the legislature's intent that the objective of the department of social and health services be to obtain payment in full of arrears, or where that is not possible, to enter into agreements with delinquent obligors to make timely support payments and make reasonable payments towards the arrears. The legislature intends that if the obligor refuses to cooperate in establishing a fair and reasonable payment schedule for arrears or refuses to make timely support payments, the department shall proceed with certification to a licensing entity or the department of licensing that the person is not in compliance with a child support order. [1997 c 58 § 801.]

Although effective July 1, 1997, DCS did not adopt implementing rules until August 11, 1998. These were adopted under WSR 98-17-031 and codified as WAC 388-14-520. The rule has subsequently been recodified in WAC 388-14A-4500 through 4530. The application of the law would not begin until, at its earliest, September 11, 1998.

4. The noncompliance and license suspension program is remedial in nature. The legislature clearly intended that the threat of license suspension would be a strong incentive to enforcement of timely payments and establishment of a repayment schedule of arrears. Although remedial and retroactive application is indicated, the courts will not apply a remedial statute retroactively if it affects a substantive or vested right. *Miebach vv. Colasurdo*, 102 Wn.2d 170, 181, 685 P.2d 1074 (1984). Suspension or revocation of a driver's license is not penal in nature and it is not intended as punishment. Proceedings to revoke a driver's license are civil, not criminal, in action. *State v. Scheffel*, 82 Wn.2d 872, 514 P.2d 1052 (1973). The noncompliance and license suspension provision does not unjustly or unreasonably impair Mr. Knight's driving privilege. Mr. Knight could avoid its impact by paying support, seek modification and enter into an agreement to pay arrears support. It may be assumed that the law on noncompliance would not apply to those who are already six months or more in arrears at the time the act became effective. Assuming that the law does not apply to arrears accrued prior to July 1, 1997, or the effective date of the rule adoption, September 11, 1998, Mr. Knight has failed to pay child support in amounts exceeding six months payments since October 15, 2001.

5. Mr. Knight may prevail on his retroactive prohibition argument only if the noncompliance and license suspension law does not apply to any support order entered before July 1, 1997. Such a result would render the legislature's intent a virtual nullity as to existing support obligation. RCW 74.20A.320 applies to Mr. Knight's child support order.

(3) Mr. Knight raises several arguments regarding the validity of the law and DSHS implementing rules. The ALJ does not have authority to determine the constitutionality of the statutory law. Only the courts have that power. *Bear v. Gorton*, 84 Wn.2d 380, 526 P.2d 379 (1974). Where the legislature has specifically delegated rule-making authority to DSHS, the regulations are presumed valid. *Anderson, Leach, & Morse, Inc. v. State Liquor Control Board*, 89 Wn.2d 688, 695, 75 P.2d 221 (1978). The Noncustodial Parent's challenge to the constitutionality of the law will not and may not be addressed in this administrative proceeding. WAC 388-02-0225. The Noncustodial Parent's argument should be addressed to the court.

ORDER

FINDINGS OF FACT AND CONCLUSIONS OF LAW having been entered herein:

NOW THEREFORE IT IS ORDERED THAT

The Noncustodial Parent is in noncompliance with the Order of Child Support entered July 11, 1991 in King County Superior Court Cause No. 9-3-04471-1.

SERVED on the date of mailing.


GAIL G. MAURER
Administrative Law Judge

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GGM:dm

Enclosure(s)

cc: Roger Knight, Noncustodial Parent
Ellen Nolan, Program Admin.
Tom Atkinson, Claims Officer
Seattle DCS Representative

APPEAL RIGHTS

Reconsideration: You have the right to request that the Administrative Law Judge (ALJ) reconsider this Final Order. RCW 34.05.470 and WAC 388-02-0605. Your request must be in writing and must be received by the ALJ within ten (10) calendar days of the mailing date of the Final Order. If the reconsideration request is not received within this ten-day period, it will not be considered, and the time line to ask for superior court review continues to run.

If the reconsideration request is timely, the ALJ then has twenty (20) days to either decide the request or mail you and the other parties a written notice specifying the date the ALJ will decide the request. The reconsideration request is denied if no action is taken by the ALJ within the twenty-day period. If the request is timely, the time line to ask for superior court review will start on the date the reconsideration order is mailed.

Superior Court Review: You also have the right to appeal this Final Order to superior court within thirty (30) calendar days of the mailing date of the Final Order. RCW 34.05.542(3) and WAC 388-02-0645. You do not need to file a request for reconsideration before requesting review in superior court. DSHS cannot request superior court review. Please refer to WAC 388-02-0650 for information about how to serve your request for superior court review.

[affirmed]