

STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12 DHR 01244

KENNETH HOLMAN )  
)  
Petitioner, )  
)  
v. )  
)  
N.C. DEPARTMENT OF HEALTH AND )  
HUMAN SERVICES, )  
)  
Respondent. )

**FINAL DECISION  
GRANTING SUMMARY JUDGMENT  
FOR RESPONDENT**

This matter is before the undersigned on Respondent's Motion for Summary Judgment on the ground that there is no genuine issue as to any material fact. The undersigned having considered the entire record finds that this contested case is now ripe for disposition pursuant to N.C. Gen. Stat. § 150B-23, 150B-34(e), Rule 56 of the North Carolina Rules of Civil Procedure, and Rules .0101 and .0115 of the Rules of the Office of Administrative Hearings (“OAH”), Hearings Division. Having reviewed the motion and the file, the undersigned makes the following:

**FINDINGS OF FACT**

1. Petitioner filed a petition in the Office of Administrative Hearings on February 28, 2011, contesting the interception of his State income tax refund for the repayment of food stamp debt.
2. The debt for overpaid benefits was established by the Durham County Department of Social Services against the Petitioner as of April 21, 2011.
3. An overpayment of \$8,279.00 was established for the period March 2009 through February 2011, due to inaccuracy in reporting household circumstances.
4. Petitioner entered into a voluntary Repayment Agreement, on December 22, 2011, in which he agreed to repay the food stamp debt in monthly installments of \$100.00 on the “15<sup>th</sup> of each month until the balance is paid in full.”
5. The agreement states, “This agreement is null and void and the full amount due and payable should I miss even one payment. ... Failure to enter into a repayment agreement or to pay as agreed above can result in Federal payment interception and/or State Income Tax Refund interception and/or NC Education Lottery winning interception.”
6. Petitioner’s January payment of \$100.00 was not received by the Durham County Department of Social Services until January 27, 2012.

7. At the time of the intercept, there was an outstanding balance on the debt owed by Petitioner.

8. Based upon the Repayment Agreement, the payment was not made on or before the agreed upon due date; therefore, the remaining debt was due and was eligible to be submitted for State and federal income tax refund interception.

### **CONCLUSIONS OF LAW**

1. The NC Office of Administrative Hearings has jurisdiction over the parties and subject matter of this contested case pursuant to N.C. Gen. Stat. §150B-23 *et seq.*, and there is no question as to misjoinder or nonjoinder.

2. Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, admission, and affidavits show no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56.

3. A movant may show that summary judgment is warranted by “(1) proving that an essential element of the plaintiff’s case is non-existent, (2) showing through discovery that the plaintiff cannot produce the evidence to support an essential element of his or her claim, or (3) showing that the plaintiff cannot surmount an affirmative defense.” Losing v. Food Lion, LLC, 648 S.E.2d 261, 263 (N.C. App. Ct. 2007)(quoting Draughon v. Harnett Cty. Bd. Of Educ., 158 N.C. App. 705, 708, 582 S.E.2d 343 345 (2003)).

4. In response to a motion for summary judgment, the “opposing party has no duty to come forward until the movant has met its burden; if the internal inconsistencies in the movant’s evidence reveal a genuine issue of material fact, summary judgment should be denied.” Beaver v. Hancock, 72 N.C. App. 306, 310, 324, S.E.2d 294, 298 (1985). “Once the movant has presented a sufficient showing, however, the non-movant cannot rest on conclusory allegations. [cite omitted] Rather, it must come forward with specific facts showing a genuine issue for trial.” Id.

5. The subject matter of a contested case hearing by the ALJ is the agency’s decision and whether the agency acted in some manner that substantially prejudiced petitioner's rights, and that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. See N.C. Gen. Stat. § 150B-23(a)

6. Because Petitioner’s remaining balance on his food stamp debt exceeded the amount of \$314.00 collected through his State income tax refund at the time of the intercept, and based upon Petitioner’s agreement to repay the established debt of \$8,279.00 and his failure to make timely payments as agreed, the debt was properly submitted for State income tax refund interception, and the interception was proper under N.C.G.S. Chapter 105A as a matter of law.

BASED UPON the foregoing Findings of Fact and Conclusion of Law, the undersigned makes the following Final Decision and Order:

**FINAL DECISION**

Having reviewed the documents of record, the undersigned Administrative Law Judge finds and so holds that there is no genuine issue as to any material fact and Respondent is entitled to judgment as a matter of law. Respondent's Motion for Summary Judgment should be and is GRANTED.

**NOTICE**

Under G.S. 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge may commence such appeal by filing a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. The party seeking review must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Decision and Order. Under G.S. 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

**IT IS SO ORDERED.**

This is the 5th day of June, 2012.

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Donald W. Overby  
Administrative Law Judge