

STATE OF NORTH CAROLINA
COUNTY OF PENDER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DHR 09422

NIKKO & SHANNON SCOTT

Petitioner,

v.

N.C. DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Respondent.

FINAL DECISION
ORDER OF DISMISSAL

THIS MATTER, came on for hearing on June 26, 2013, before Senior Administrative Law Judge Fred G. Morrison Jr. by telephone from Raleigh, North Carolina, on the issue of Respondent's Motion to Dismiss.

APPEARANCES

For Petitioner: Shannon Scott
535 Green Acre Dr.
Hampstead, NC 28443

For Respondent: Micheal E. Butler
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, N.C. 27699-9001

After considering the testimony of witnesses, exhibits introduced into evidence, and the parties' arguments, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner filed a petition in the Office of Administrative Hearings on March 1, 2013, contesting the intercept of her State tax refund for the repayment of a food stamp debt.
2. Petitioner received overpayments of food stamp benefits from the New Hanover County Department of Social Services ("New Hanover County DSS") from February 1, 2009,

through July 31, 2011, in the amount of \$7,642.00. This debt for overpaid benefits was established by New Hanover County DSS against the Petitioner on January 13, 2012.

3. Petitioner concurs with Respondent, both by her Response to Respondent's Motion to Dismiss and oral argument, that she was responsible for a debt of \$7,642.00 to New Hanover County DSS.

4. On June 23, 2012, New Hanover County DSS sent a **NOTICE OF INTENT TO SUBMIT DEBT TO U.S. TREASURY FOR OFFSET COLLECTION**, informing Petitioner that New Hanover County DSS intended to submit a debt of \$7,575.00 to the U.S. Department of Treasury for collection through the Treasury Offset Program ("TOP"), and allowing sixty days to appeal. Petitioner did not request a hearing within sixty days.

5. The Petitioner had several opportunities to exercise due process with the Department before filing this Petition with the North Carolina Office of Administrative Hearings. The Petitioner had the right to contest the underlying amount owed to the Department when issued the **LETTER OF OVERISSUANCE**; Petitioner did not exercise the right to contest the debt within the 90 days allotted. New Hannover County DSS sent a **NOTICE OF INTENT TO SUBMIT DEBT TO U.S. TREASURY FOR OFFSET COLLECTION**, which the Petitioner again failed to contest, within the 60 days allotted.

4. The food stamp debt was repaid in full: nine recoupments were withheld from food stamp benefits the Petitioner was paid between March 31, 2012, and February 16, 2013, totaling \$181.00 and a federal tax intercept of \$7,543.00 by the United States Department of Treasury on February 6, 2013.

5. Petitioner's State income tax refund of \$142.50 (\$137.50 collected by the NC Department of Health and Human Services, minus a \$5.00 administrative fee charged by the

Department of Revenue to process the intercept) was also intercepted on 7 February 2013. Because the debt was fully satisfied by the federal intercept, the State intercept was fully refunded to the Petitioner including the \$5.00 administrative fee and interest earned.

CONCLUSIONS OF LAW

1. To the extent Petitioner contests the intercept by the U.S. Department of Treasury, the Office of Administrative Hearings does not have jurisdiction over the subject matter of federal agency actions and, therefore, has no jurisdiction over the federal intercept. See N.C.G.S. § 150B-2 (1a) (defining “agency” as “an agency or an officer in the executive branch of the government of **this State**”) (emphasis added) and N.C.G.S. § 150B-2 (2) (defining “contested case” as “a dispute between an agency and another person.”).

2. Any review available to the Petitioner of the underlying debt and the submission of the debt to the Treasury Offset Program should have been directed to the New Hanover County DSS.

3. The time to appeal the establishment of the debt and the submission to the Treasury Offset Program has passed.

4. After providing the Petitioner ample opportunity to be heard on the underlying issues of the establishment of the debt and how it was to be collected, the Department of Health and Human Services correctly followed the procedures outlined by N.C. Gen. Stat. § 105A *et seq.*

5. The intercept of Petitioner’s North Carolina income tax refund is moot, because it has been completely refunded with interest. The Office of Administrative Hearings lacks jurisdiction over the federal tax intercept by the U.S. Department of Treasury. The \$7,655.00 debt was established by New Hanover County DSS, and Petitioner failed to request a timely

review of the establishment of the debt through New Hanover County DSS. Accordingly, there are no justiciable issues before the Office of Administrative Hearings.

IT IS THEREFORE ORDERED that:

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure and other applicable authority that this matter is hereby **DISMISSED** for lack of subject matter jurisdiction and for mootness.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file 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 appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.**

In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §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 26th day of June, 2013.

Fred G. Morrison Jr.
Senior Administrative Law Judge

