

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DHR 04393

<p>Dora Zepeda Pastrana Petitioner,</p> <p>v.</p> <p>DHHS Respondent.</p>	<p>FINAL DECISION ORDER OF DISMISSAL</p>
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THIS MATTER is before the undersigned on the *Respondent's Motion for Summary Judgment*. This contested case was initiated by a Petition for a hearing in the North Carolina Office of Administrative Hearings to challenge Respondent's intention to intercept Petitioner's State tax refund to recover Medicaid overpayments.

ISSUE

Whether the Respondent is entitled to Summary Judgment as a matter of law?

DISCUSSION

The motion shows that Petitioner was in arrears in the payments due under a Voluntary Repayment Agreement, and that the amount of arrearage met the statutory threshold for interception of a State income tax refund.

In her Prehearing Statement, the Petitioner did not deny the debt or the arrearage, saying only that she did not have the funds to make the missed payments because she had traveled out of the country to attend a funeral.

It appearing that there is no genuine issue of material fact contradicting the Respondent's right and duty to intercept Petitioner's tax refund pursuant to Chapter 105A, the Setoff Debt Collection Act, and related laws and rules, Respondent is entitled to summary judgment as a matter of law. A factual dispute is "material" only if it might affect the outcome of the case. *Anderson v. Liberty Lobby*, 477 US 242, 247-48 (1986).

SUMMARY JUDGMENT

THEREFORE, IT IS ORDERED that summary judgment pursuant to Rule 56, of the North Carolina Rules of Civil Procedure, applicable to contested cases under 26 NCAC 03.0101(1), is GRANTED in favor of the Respondent, and the Petition is **DISMISSED**.

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 the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **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 03.0102, 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 the 6th day of September, 2016.

J Randolph Ward
Administrative Law Judge