

## Division of Child Support Enforcement Appeals

Virginia Code § 63.2-1942 establishes the administrative hearing procedure in child support enforcement cases. Virginia Code § 63.2-1943 provides that from the decision of the hearing officer there shall be an appeal *de novo* to the juvenile and domestic relations district court of the jurisdiction wherein the appellant resides. The Setoff Debt Collection Act appears in Virginia Code § 58.1-520 through §58.1-535.

Preparation is crucial to the presentation of your case at the hearing. The hearing officer is impartial and comes to the hearing knowing only what the agency has presented in its summary of facts. The quality of the presentation by both the district office and the customer at the hearing is very important to the case. It is important that the participants present all of the information that the hearing officer needs to render a decision. Besides weighing the testimony of the participants and the evidence, the hearing officer will be evaluating the credibility of the witnesses. Do the witnesses appear to be informed? Can they document what they say happened? Is their explanation logical? Do they cite policy to support their position?

The Child Support Enforcement Section hearing officers have compiled a list of suggestions below to help you prepare to present your case:

### 1. Requesting an Administrative Appeal

- a. An administrative appeal is a formal hearing that allows an appellant the opportunity to contest actions taken by the Division of Child Support Enforcement.
- b. A request for an administrative appeal hearing must be made in writing. A request for an appeal of an Administrative Support Order must be received within 10 calendar days of service of the order. Appeal of a State or Federal Income Tax Intercept must be received within 30 calendar days of the order.
- c. A request for an appeal from an action of the Division of Child Support Enforcement must be made in writing and mailed to:

Virginia Department of Social Services, Appeals and Fair Hearings  
Unit, 801 E. Main Street, Richmond, VA, 23219

### 2. Before the Hearing

- a. The appeal will be assigned to a hearing officer. If the hearing officer determines that the appeal is valid, the hearing officer will schedule the hearing within 45 days from the postmark date, unless there are delays due to scheduling conflicts or a request for a continuance.

- b. The custodial parent, noncustodial parent, and their counsel, if any, will be notified in writing of the date, time, and location of the hearing. The appellant is responsible for providing the hearing officer with a current, correct mailing address. The district office will be notified of the hearing date, time and location through the work list.
- c. The hearing will be held at the district office where the custodial parent resides, unless the hearing officer approves other arrangements.
- d. The appellant may request a telephonic hearing by contacting the hearing officer either in writing or by telephone.
- e. The appellant is responsible for providing his/her own transportation to the hearing.
- f. A pre-hearing conference may be held at the district office to address preliminary matters prior to the hearing date.
- g. An appellant who requires special assistance or an accommodation must notify the hearing officer as soon as possible.
- h. The district office representative must submit the case documents to the hearing officer no later than three workdays before the hearing.

### 3. Rescheduling/Failure to Appear

- a. The hearing may be rescheduled once, for good cause as determined by the hearing officer, if the request is made in advance. The appellant may initially make the request for a continuance by telephone or in writing. The hearing officer has discretion to reschedule a hearing in the case of an emergency.
- b. An appeal request is considered abandoned if the appellant fails to appear and does not contact the hearing officer to reschedule prior to the date and time of the hearing.
- c. If the appellant fails to appear and does not contact the hearing officer prior to the hearing date to reschedule, the appellant may contact the hearing officer after the hearing date and give a valid reason for not appearing. The hearing officer may schedule another hearing but is not required to do so.
- d. If the appeal is abandoned the support obligation is due and legally enforceable.

### 4. The Hearing

- a. If appellant has requested a telephonic hearing, the appellant is responsible for placing the call to the hearing officer.
- b. The hearing officer has complete authority over the hearing, including the authority to limit the number of witnesses and to require that the evidence be relevant to the issue being appealed.

- c. Formal rules of evidence do not apply at the hearing. Only evidence that is determined by the hearing officer to be relevant to the issue being appealed will be admissible.
- d. Either party may record the hearing.
- e. The hearing officer will record the hearing if the issue on appeal involves state or federal tax intercepts.
- f. The hearing officer will make a preliminary statement explaining the hearing procedure before the hearing begins.
- g. The hearing will generally follow this order:
  - i. Introductory statement and introduction of attendees by hearing officer;
  - ii. Presentation of the district office's case;
  - iii. Questions by appellant;
  - iv. Presentation of the appellant's case;
  - v. Questions by the district office;
  - vi. District office's closing statement (may be waived);
  - vii. Appellant's closing statement (may be waived).
- h. The appellant has the right to:
  - i. Examine all documents and records used by the district office in determining the support obligation which are otherwise obtainable through the Freedom of Information Action, with the exception of information protected by the Government Data Collection and Dissemination Practices Act.
  - ii. Present the case or have it presented by legal counsel or another person;
  - iii. Bring witnesses to the hearing;
  - iv. Advance arguments without undue interference at the hearing;
  - v. Question or refute all pertinent facts and circumstances in the case;
  - vi. Submit evidence to establish pertinent facts and circumstances.
- i. The hearing officer may hold the record open to receive additional evidence or clarify facts at the request of either party.

#### 5. Hearing Protocol

- a. The parties should be ready to begin the hearing at the scheduled time with all witnesses present.
- b. The parties should direct their comments to the hearing officer.
- c. The parties should not engage in argument with the other side.
- d. During the presentation of the district office's case, the appellant should make notes of rebuttal statements to make when it is the appellant's turn to speak. During the presentation of the appellant's case, the district office representative should make notes of rebuttal

statements to make when it is the district office representative's turn to speak.

- e. While listening to the district office's witness testify, the appellant should make notes of questions to ask when it is the appellant's turn to question the witness.
  - f. While listening to the appellant's witness testify, the district office representative should make notes of questions to ask when it is the district office representative's turn to question the witness.
  - g. During the hearing the parties should remember to address everyone present by their appropriate title and their last name.
6. Burden of proof: In order for the noncustodial parent to appeal the enforcement of the support obligation, the appellant must prove that either:
- a. the action was based on a mistake of fact because there was either an error in the identity of the noncustodial parent or an error in the amount of current support or past due support owed, or
  - b. the funds are exempt from garnishment by law.
7. Hearing Officer's Decision
- a. A written decision will be sent to all parties by certified mail, return receipt requested, within 45 calendar days of the date of the appeal request, unless a continuance was granted. A copy of the decision will be sent to the district office.
  - b. If the hearing took place in person, rather than by telephone, the hearing officer may request a waiver of service by certified mail and may personally serve the decision on the parties. If service of the decision is made personally at the time of the hearing, the district office will send a copy of the decision, by certified mail, to the custodial parent if the custodial parent is not present at the hearing.
8. Appeal from the Hearing Officer's Decision
- a. The appellant and/or custodial parent may appeal the hearing officer's decision to the appropriate Juvenile Domestic Relations Court within 10 calendar days of receipt of the hearing officer's decision.
  - b. In cases involving the Set-Off Debt Collection Act and vendor actions, the appellant and/or custodial parent may appeal the hearing officer's decision to the appropriate Circuit Court. When a case is appealed to Circuit Court the Appeals and Fair Hearing Unit will prepare a transcript from the tape recording of the hearing for the record on appeal.
9. Responsibilities of the District Office
- a. District office staff must review the case to determine whether:
    - i. Appropriate policy was followed;

- ii. Additional information is needed by the hearing officer; or
  - iii. copies of appropriate documents such as the ASO, Notice of Proposed Action for Mandatory Withholding of Earnings, Obligation Worksheets, court orders, affidavit of arrears and relevant documentation need to accompany the summary of facts.
- b. The district office must place a hold on the account until all administrative appeals have been exhausted.
  - c. The district office may withdraw their action prior to the hearing date if its case review reveals that action taken was incorrect.
  - d. The district office will be notified of the hearing date through the worklist generated by APECS.
  - e. The district office must attend the administrative hearing and be prepared to explain the Commonwealth's actions according to policy and procedure.
  - f. The district office must comply with the decision of the hearing officer.
  - g. The district office must generate a worklist to the hearing officer indicating compliance with the decision.
  - h. The district office must send a copy of the hearing decision, by certified mail, to the custodial parent if the noncustodial parent is served at the hearing.
  - i. The district office must send a Request for Registration of Foreign Support Order and other court forms necessary to take enforcement action to the juvenile court within five working days of receiving written notice of the request for an appeal of the hearing officer's decision in an interstate case.

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