



## PUBLIC REPORT

Ombudsman Complaint A2005-0885  
Finding of Record and Closure  
(PUBLIC PER AS 24.55.200)

*(Edited to remove information that would identify the complainant.)*

December 30, 2005

A non-custodial parent (Jane Doe Smith<sup>1</sup>) contacted the ombudsman in July to complain that CSSD collected wage withholding from her employer to satisfy a support order and then garnished her tax refund to pay the same order. She contended that CSSD collected far more money than was actually required to satisfy the obligation.

Assistant Ombudsman Beth Leibowitz investigated the following allegation and forwarded her report to me:

***Allegation 1: CSSD erroneously disbursed child support to a custodial parent while that parent was receiving public assistance payments. CSSD then garnished and unreasonably retained the complainant's income tax refund to repay the public assistance debt to the state, forcing the complainant to pay child support twice.***

CSSD records indicate that CSSD disbursed Ms. Smith's withheld wages to the custodial parent while he was also receiving public assistance benefits, and then retained most of Ms. Smith's garnished tax refund to pay the public assistance debt to the state. The ombudsman therefore found the allegation **justified**.

## BACKGROUND

Ms. Doe wrote to our office on July 19, 2005. She and Richard Doe are parents of a teenage daughter who lived primarily with Ms. Smith until 2004 when she moved in with Mr. Doe. At that time, Mr. Doe owed Ms. Doe several thousand dollars in past support in CSSD case #XXX01. His last payment on arrearages owed to Ms. Smith was \$16 paid in January of 2004, according to the CSSD automated case information system, KIDS Online.

After their daughter went to live with her father, he applied for and began receiving public assistance in February 2004. CSSD served an administrative support order on Ms. Smith in May 2004 (case #XXX02). CSSD collected on Ms. Smith's support obligation until the daughter emancipated in June 2005. As part of its collection

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<sup>1</sup> Case numbers and names have been changed to protect the identity of the complainant.

efforts, CSSD attached Ms. Smith's tax refund in April 2005. The fate of that tax refund attachment is the subject of this complaint.

## INVESTIGATION

Ms. Leibowitz reviewed the materials that Ms. Smith provided with her complaint, including a hearing officer's Decision and Order of May 23, 2005 for case #XXX02. [From this point forward all reference to "the support case" will refer this case, in which Ms. Smith was the obligor.] Ms. Leibowitz also contacted Will Hauser, of the CSSD Complaint Resolution Office, who provided records of payments in the case, as well as adjustment worksheets dated May 31, 2005, and August 2, 2005. The adjustment worksheets state that Ms. Smith overpaid CSSD \$1,037.81.

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After receiving CSSD's administrative support order in May 2004, Ms. Smith requested an administrative review. On September 29, 2004, CSSD issued an Amended Administrative Child and Medical Support Order setting her monthly obligation for the daughter's support at \$232, effective from February 2004 forward. Ms. Smith appealed the amended order, and CSSD held a formal hearing in January 2005. At the hearing, CSSD agreed that it would not oppose setting Ms. Smith's obligation at \$50/month from February 2004 through November 2004. Ms. Smith had successfully argued she was at home caring for a preschool age child (daughter's younger sibling) and was without paid employment during that period. In mid-November of 2004, Ms. Smith obtained paid employment. CSSD proposed to set support at \$329 per month<sup>2</sup> from December 2004 forward.<sup>3</sup>

CSSD issued a wage withholding order to Ms. Smith's employer shortly after the formal hearing. The withholding order was for \$163.08 each bi-weekly pay period (\$326/month). The first payment due to wage withholding arrived February 24, 2005.

In the meantime, Mr. Doe opened and closed his public assistance case a few times between February and December of 2004. However, according to Mr. Hauser and the CSSD adjustment worksheets of May 31, 2005 and August 2, 2005, Mr. Doe and the child were in fact receiving public assistance from December 2004 through her emancipation in June 2005.

When CSSD began receiving wage withholding payments from Ms. Smith's employer in February 2005, the child support was assigned to the state because Mr. Doe and the child were receiving Alaska Temporary Assistance Program (ATAP) benefits. When support payments are assigned to the state, CSSD is supposed to retain any support monies paid to the agency with the exception of a monthly \$50 "pass through" which is given to the custodial parent. However, CSSD disbursed all of Ms. Smith's support payments through the withholding order to Mr. Doe from February 24, 2005 through May 25, 2005, even though he continued to receive ATAP. Mr. Hauser indicated that this occurred because of a CSSD computer coding error. In the meantime, the public assistance debt went unsatisfied and grew monthly. The August 2, 2005 adjustment

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<sup>2</sup> The actual monthly support amount was \$348; \$329 was the amount remaining after deduction of a \$19 health insurance credit.

<sup>3</sup> The administrative law judge confirmed CSSD's proposed amount of \$329/month in the decision of May 23, 2005. The decision also set support prior to December 2004 at \$50/month.

worksheet shows the permanently assigned arrears increased from \$348.16 on February 1, 2005, to \$1006.16 on April 26, 2005.

While CSSD was collecting child support from Ms. Smith through wage-withholding, CSSD also garnished her \$1,776 tax refund on April 28, 2005, and applied \$1506.16 to the public assistance arrears due to the state. The remainder, \$269.84, was refunded to Ms. Smith, according to the August 2, 2005 adjustment worksheet. The tax refund covered the permanently assigned arrears that had accumulated in large part because Ms. Smith's monthly payments had been mistakenly disbursed to Mr. Doe instead of being applied to the arrears assigned to the state. The application of the tax refund placed Ms. Smith in "overpay" status.<sup>4</sup>

CSSD received two more payments from wage withholding in May 2005, and again disbursed these payments to Mr. Doe.

On May 31, 2005, CSSD completed an adjustment worksheet to recalculate Ms. Smith's debt after issuance for the written Decision and Order on May 23. CSSD calculated that Ms. Smith had overpaid support in the amount of \$1,037.81, the total amount disbursed to Mr. Doe while he was on public assistance. Ms. Smith had paid twice – once to Mr. Doe (due to CSSD's erroneous disbursements), and once to reimburse the state for public assistance debt.

CSSD did not refund the \$1,037.81 to Ms. Smith. CSSD concluded that Mr. Doe – not CSSD – owed the money to Ms. Smith, because it had been disbursed, albeit erroneously, to Mr. Doe. CSSD instead added the \$1,037 to the arrears that Mr. Doe already owes to Ms. Smith in his other CSSD case, #XXX01. Mr. Doe already owed Ms. Smith more than \$7,000 in arrears in that case. As of September, 2005; KIDS Online indicated that Mr. Doe's arrears in this case were \$9,056. His most recent payment is shown as \$16 paid in January 2004.

### ***Statutes, Regulations and Agency policy***

**AS 25.27.120** directs that a child support obligor is liable to compensate the state for public assistance furnished to a custodial parent.

**AS 25.27.130** directs that the state is subrogated to the rights of the obligee to bring or enforce a support order.

CSSD Desk Manual, Chapter Funding, issue: Overpayment to custodial parent, states in large boldface print "**Staff all overpayment cases.**"

### **ANALYSIS AND FINDING**

According to the Office of the Ombudsman's Policies and Procedures Manual at 4040(2) an administrative act is unreasonable if:

- (A) the agency adopted and followed a procedure in managing a program that was inconsistent with, or failed to achieve, the purposes of the program,

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<sup>4</sup> In April 2005, CSSD may not yet have adjusted the arrears to account for the hearing decision; although the hearing was in January, the written decision did not issue until May 23, 2005. Although the August 2<sup>nd</sup> adjustment worksheet shows a \$500 overpay in the permanently assigned arrears category on April 28, 2005, that overpayment may not actually have been noticeable until the account was adjusted at the end of May.

(B) the agency adopted and followed a procedure that defeated the complainant's valid application for a right or program benefit, or

(C) the agency's act was inconsistent with agency policy and thereby placed the complainant at a disadvantage relative to all others

The standard used to evaluate all Ombudsman complaints is the preponderance of the evidence. If the preponderance of the evidence indicates that the administrative act took place and the complainant's criticism of it is valid, the allegation should be found justified.

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***Allegation 1: CSSD erroneously disbursed child support to a custodial parent while that parent was receiving public assistance payments. CSSD then garnished and unreasonably retained the complainant's income tax refund to repay the public assistance debt to the state, forcing the complainant to pay child support twice.***

There is no doubt that the administrative act took place. CSSD employees concede and their own records show that agency error caused an overpayment of \$1037 to the custodial parent by not applying Ms. Smith's support payments to the public assistance debt. Instead, her support was forwarded to Mr. Doe while he continued to receive public assistance benefits. The agency did not concede that it should bear the consequences of making that error.

CSSD issued the wage withholding order and Ms. Smith complied with it. CSSD then erred twice a month for four months by forwarding the semi-monthly support payments to Mr. Doe while he was receiving public assistance payments. Then CSSD compounded its errors by garnisheeing Ms. Smith's tax refund to pay for the public assistance debt incorrectly created by CSSD's error. Finally, CSSD refused to accept responsibility and rectify its own error.

The state instead reimbursed itself for the assigned child support debt it wrongly created, and left Ms. Smith to attempt to recover her money from an individual already deeply indebted to her, with a poor history of payment.

CSSD maintained that Mr. Doe must repay Ms. Smith because he received the *wage withholding* funds and public assistance benefits, while CSSD received the *income tax refund*. CSSD's argument is unpersuasive at best and specious at worst. Ms. Smith's obligation under the law was to pay support through the CSSD withholding order. She fulfilled her obligation.

Once she paid she had no control over what happened to those funds. The agency alone determined where those funds went and the agency alone sent them to the wrong place. Because CSSD erroneously sent the money to the wrong place, it caused Ms. Smith's public assistance debt to grow.

She would not have had the public assistance debt if it had not been for CSSD's "coding error." The ombudsman agrees that Mr. Doe should repay the money but he owes it to CSSD, not to Ms. Smith. She should not be made to bear the financial burden of waiting for Mr. Doe to compensate her for a mistake CSSD made.

The ombudsman also cannot help but note the irony of CSSD directing Ms. Smith to seek compensation from Mr. Doe when CSSD was unable to induce him to pay his

CSSD ordered child support to her during the life of the initial child support order. As of November 2005, Mr. Doe owed Ms. Smith approximately \$8000 in support arrearages in that case, not including the \$1,037 discussed in this complaint. Mr. Hauser explained that CSSD would attempt to recover payment on Mr. Doe's arrears, including the \$1,037.81 overpayment. The ombudsman does not doubt that CSSD will employ all available enforcement mechanisms, but unless Mr. Doe suddenly obtains a settlement or has some other favorable and dramatic change of circumstances, payment does not appear likely.

CSSD overcharged Ms. Smith by \$1,037. CSSD policy is to retain support payments for the state when the custodial parent is receiving public assistance for the child; CSSD failed to follow that policy and has placed Ms. Smith at an unusual disadvantage by essentially double-billing her. The purpose of CSSD is to collect the support owed, neither more nor less. CSSD is in a position of trust, as it handles thousands of individuals' funds. If CSSD refused to assume financial responsibility for its own error it would undermine confidence that CSSD will actually fulfill its purpose. Therefore, the Ombudsman found Ms. Smith's complaint that CSSD unreasonably refused to reimburse her support overpayment to be *justified* by the facts uncovered in this investigation.

**CSSD Response to Finding:** CSSD did not contest the finding. CSSD acknowledged that agency error had caused the complainant to be overcharged. On November 10, 2005, CSSD refunded \$1,037.81 to Ms. Smith. Two weeks later, CSSD issued a separate warrant issued for \$31.14 in interest owed to Ms. Smith pursuant to AS 25.27.320.

## RECOMMENDATIONS

The ombudsman made the following recommendations:

***RECOMMENDATION 1: CSSD should assume responsibility for the debt created by CSSD action and immediately refund to Ms. Smith the \$1,037.81 it attached, with any interest as required by AS 25.27.320.***

CSSD can then treat the funds disbursed to Mr. Doe as money owed to the state for public assistance debt. Mr. Doe would be in the same position as any other custodial parent who improperly retained support payments while on public assistance. In the meantime, Ms. Smith would no longer bear the cost of the CSSD error.

CSSD also should act to require that Mr. Doe apply for his permanent fund dividend as per agency policy and procedure until Mr. Doe has paid his old arrears in case #XXX01 and has reimbursed the state for the support that he improperly retained while he was receiving public assistance.

**CSSD Response:** As noted above, CSSD issued a refund to Ms. Smith shortly after CSSD received the preliminary report. CSSD also paid Ms. Smith \$31.14 in interest, pursuant to AS 25.27.320.<sup>5</sup>

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<sup>5</sup> AS 25.27.320(a) provides: "If the agency disburses money to an obligor because the agency made an error and mistakenly required the obligor to overpay under a support order enforced by the agency, the agency shall include interest with the disbursement at the rate of six percent a year. The interest accrues from the date the payment at issue was received by the agency, regardless of when the payment is determined to be an overpayment."

***RECOMMENDATION 2: If CSSD is unable to refund the amount owed to Ms. Smith, CSSD should cooperate with the Division of Risk Management to address a claim filed by Ms. Smith.***

According to Mr. Hauser, the disbursement of money to Mr. Doe while he was on public assistance resulted from a coding error. Because errors and accidents do occur, the Division of Risk Management exists to adjust claims against the state. The ombudsman has explained to Ms. Smith that she has a right to file a claim with the Division of Risk Management.

**CSSD Response:** CSSD was able to issue a refund, and therefore did not need to implement this recommendation.

***RECOMMENDATION 3: CSSD should develop a policy for dealing with overpayments made due to error by the agency.***

**CSSD Response:** CSSD Director John Mallonee responded as follows:

CSSD has a policy in place to deal with overpayment made due to an error made by the agency. In this instance the May 23, 2005 Formal Hearing Decision was received by the formal hearing section and Ms. Smith's file was sent to accounting to be adjusted as directed by the Administrative Law Judge in the Decision, section V, Child Support order item 4: *CSSD is directed to offset Ms. [Smith's] case with Mr. [Doe's] reverse party case number [XXX01].* [italics in original]

**Ombudsman Comment on CSSD Response:** The response implies that CSSD's initial failure to refund the overpayment was due to peculiar wording in the administrative law judge's decision, and that therefore Ms. Smith's difficulty was unique. When the administrative law judge (ALJ) issued a decision on May 23, 2005, she had no way of knowing that CSSD had overcharged Ms. Smith, as CSSD did not discover the error until CSSD adjusted Ms. Smith's account on May 31, 2005. Instead, the ALJ wrote, "Mr. Doe has a 'reverse party' case in which he owes Ms. Smith support, so CSSD has indicated that it will offset Ms. Smith's arrears against his pursuant to 15 AAC 125.455." The ALJ then ordered the offset. This appears to have been intended to allow any of Ms. Smith's arrearage that was owed to Mr. Doe<sup>6</sup> to be reduced because Mr. Doe already owed Ms. Smith several thousand dollars. It had nothing to do with preventing CSSD from refunding Ms. Smith's overpayment. In short, the ALJ's order may have contributed to CSSD's confusion, but CSSD's failure to immediately refund the overpayment was not a necessary result of the order.

CSSD has indicated that Ms. Smith's case is a unique problem that does not necessarily require a new general policy. The ombudsman hopes that CSSD's initial actions in this case – double-billing the obligor due to a computer error, and failing to

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<sup>6</sup> 15 AAC 125.455 allows only an offset of arrears, not of ongoing support. Ms. Smith had no arrears to offset, since she had already overpaid. Also, the regulation does not allow an offset of when arrears are owed to the state for public assistance reimbursement instead of to the custodial parent; as the arrears in this case were nearly all assigned to the state, the offset regulation provided little relief.

refund the overpayment even though CSSD had retained the amount to satisfy state debt  
– is indeed a unique instance that will never be repeated.