



**Washington State Auditor's Office**

**Troy Kelley**

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## **Whistleblower Investigation Report**

# **Department of Social and Health Services**

**For the period July 1, 2013 through June 30, 2014**

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## Washington State Auditor Troy Kelley

April 9, 2015

Kevin Quigley, Secretary  
Department of Social and Health Services

### **Report on Whistleblower Investigation**

Attached is the official report on Whistleblower Case No. 14020 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

TROY KELLEY  
STATE AUDITOR  
OLYMPIA, WA

cc: Andrew Colvin, Public Disclosure and Ethics Administrator  
Governor Jay Inslee  
Kate Reynolds, Executive Director, Executive Ethics Board  
Cheri Elliott, Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertion and results

Our Office received a complaint asserting managers at the Department of Social and Health Services' Division of Child Support (DCS) were creating back-dated child support orders after discovering support payments were collected based on unenforceable support orders. By doing this DCS was able to retain and distribute the funds without providing the noncustodial parent an opportunity to object and have the improperly collected payments refunded.

We found no reasonable cause to believe the subjects of this investigation committed improper governmental actions. However, we found DCS was not in compliance with state law when it collected child support payments based on unenforceable orders. We found that subsequent to discovering the orders were unenforceable, new orders were created to include the dates the payments had been collected. Both of these actions are based on DCS' standard operating procedures.

## Background

The Department of Social and Health Services' Division of Child Support (DCS) collects child support payments from non-custodial parents and distributes them to custodial parents. Collection may begin at the request of the custodial parent, through a court or administrative order, or subsequent to a custodial parent receiving state assistance. If a parent is receiving state assistance, the law requires the parent to assign all rights to child support to the state beginning the date of assistance. In this way, the state is allowed to recoup the funds provided in assistance.

A state rule requires DCS to distribute child support payments to custodial parents within two days of collection. The money can be held longer under certain circumstances. If the noncustodial parent overpays child support as a result of a DCS withholding order, DCS may refund the money to the noncustodial parent or hold it for the next month's payment. The rule states that depending on the facts of the case and the wishes of the noncustodial parent the Department may:

- Refund the excess money to the noncustodial parent upon request;
- Hold the excess money for the next month's support; or
- Any other action in compliance with state rule or federal regulation.

Although the rule is silent on how the Department should communicate with the noncustodial parent, Department policy states permission to hold the money must be in writing.

## About the Investigation

We were provided seven cases identified as having child support payments collected improperly, and after discovering the error, not being refunded to the noncustodial parent. Regarding back-dating orders, the term is being used to describe the process of creating an order that includes the dates of collection covering the time period when the order was not enforceable.

Orders can be created through an administrative hearing, a superior court proceeding or by DCS giving notice to the noncustodial parent of a debt obligation. If the parent does not raise an objection to the debt and collection within 20 days, the notice becomes an enforceable order.

We reviewed the seven cases with two support enforcement officers. In the instances where the first officer did not agree with the alleged improper action, we reviewed those specific cases a second time with another support enforcement officer. Additionally, we discussed the cases with the subjects of this investigation. In three of the seven cases we found no action taken contrary to law.

The remaining four cases involved collection on child support orders that were no longer enforceable. An order may become unenforceable when parties marry or when a new order is created replacing the old order. When parties marry it is the responsibility of the parties to notify DCS. Without this notification, DCS has no way of knowing the order it is collecting under is no longer enforceable. In these instances DCS is collecting in “good faith”.

In these four cases the collection of child support, either current or past, or for purposes of reimbursing DCS for assistance, occurred based on orders that were no longer enforceable. Two cases had orders missing the language that allows collection by DCS, yet the support enforcement officer processed the case to include contacting the non-custodial parent’s employer to collect for support. One case involved collecting on an order that did not allow collection based on an error made by the drafter of the order. In one case DCS was collecting in good faith having not been informed of the marriage which made the child support order unenforceable.

In all four cases DCS collected money from the noncustodial parent based on an order that was not enforceable. Instead of refunding the money to the noncustodial parent once it determined the payments were collected under an unenforceable order, DCS began the process of creating new orders, which would allow the retention and application of the funds, either to the custodial parent or to DCS.

- Case 1 – DCS did not learn of the marriage until three years after it occurred, when the custodial parent applied for state assistance. As soon as the marriage was discovered the child support collection ceased. However, the money collected during that time period was held by DCS until a child support order was issued by the court 10 months after the first date of collection, awarding DCS three months of assistance. Three payments were refunded to the noncustodial parent.

- Case 2 – DCS collected support to be applied to assistance, only to learn six years later the order was missing the language that allowed DCS to collect. In this case the money had been applied to the assistance debt. Five months after DCS discovered the error an order was entered awarding DCS two months of assistance and, by agreement with the non-custodial parent, credited child support for some of the money that had been collected as reimbursement for assistance.
- Case 3 – DCS collected child support for four years on an unenforceable order. DCS started the process to create a new order while refunding 11 current payments to the noncustodial parent. In June 2014 during an administrative hearing, the noncustodial parent agreed to receive a credit to child support for the remainder of the funds.
- Case 4 – the order specifically stated no back child support was due and did not include language allowing DCS to collect child support. The support enforcement officer processed the case as if the language did exist and calculated back child support. Notification was sent to the non-custodial parent's employer to withhold money from his or her paycheck for current and back child support. One week later the error regarding the back child support was noticed by another DCS employee and a new withhold notice was sent to the employer omitting the collection for back support. Shortly after, the error regarding DCS' inability to collect was noted and a release for collection was sent to the employer. DCS then served the non-custodial parent with notice to collect on behalf of the custodial parent. One payment was collected during this time and was held in suspense until six months later when it was sent to the custodial parent.

Although for one of the cases above, DCS was collecting in good faith, the other three involved collection based on errors made by support enforcement officers. The issue is whether once DCS discovers the payments were collected based on unenforceable orders, does state law or rules allow DCS to retain the payments or should the payments be refunded to the noncustodial parent while the process of creating enforceable orders is undertaken.

One of the subjects of this investigation said that, in retrospect, for two of the cases it would have been far simpler to have refunded the money at the time the errors were discovered.

Another subject of this investigation suggested the process should include a better line of communication between the noncustodial parent and the support enforcement officer. He said notification to the non-custodial parent could include more information about the overcollection and options on how to address the payments. However, he said it is in the best interest of the noncustodial parent to credit the money.

Another subject said that just because the box on the order was not checked, allowing DCS to collect, does not necessarily indicate they cannot collect support for the custodial parent. This subject explained the laws and rules allowing DCS to hold payments longer than two days as follows:

RCW 26.23.035(1)(b)(iii) supports holding payments when DCS cannot identify the responsible parent or the custodian. This statute is the authority for determining what the obligation should now be, what the debt should now be, and then supply the credit for payments collected in good faith.

WAC 388-14A-5001(2)(h) also supports the retention of funds when “other circumstances exist which make a proper and timely distribution of the collection impossible through no fault or lack of diligence of DCS.”

Although the subject provided laws supporting holding payments for more than two days under certain circumstances, he did not provide a law or rule which would allow the collection of child support based on an unenforceable order. RCW 26.23.050(6) states:

(6) After the responsible parent has been ordered or notified to make payments to the Washington state support registry under this section, the responsible parent shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income-withholding action. The responsible parent shall not be entitled to credit against a support obligation for any payments made to a person or agency other than to the Washington state support registry except as provided under RCW 74.20.101. A civil action may be brought by the payor to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section.

This law makes the responsible parent responsible for making payments *after* the parent has been properly ordered or notified to make payments to DCS, not *prior* to, which is the case when collection is based on an unenforceable order. We were unable to locate any statute authorizing DCS to collect payments based on an unenforceable order or notification.

Improper governmental action means any action by an employee, or employees, undertaken in the performance of the employee’s official duties. In this instance we were unable to substantiate that the subjects of this investigation were solely responsible for directing staff to violate state law. The violation is a matter of DCS’ standard operating procedures.

## **State Auditor's Office Concluding Remarks**

We thank Agency officials and personnel for their assistance and cooperation during the investigation.

## WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 26.23.045 Support enforcement services.

(1) The division of child support, Washington state support registry, shall provide support enforcement services under the following circumstances:

- (a) Whenever public assistance under RCW 74.20.330 is paid;
- (b) Whenever a request for support enforcement services under RCW 74.20.040 is received;
- (c) When a support order which contains language directing a responsible parent to make support payments to the Washington state support registry under RCW 26.23.050 is submitted and the division of child support receives a written application for services or is already providing services;
- (d) When the obligor submits a support order or support payment, and an application, to the Washington state support registry.

(2) The division of child support shall continue to provide support enforcement services for so long as and under such conditions as the department shall establish by regulation or until the superior court enters an order removing the requirement that the obligor make support payments to the Washington state support registry as provided for in RCW 26.23.050.

WAC 388-14A-3100 How does the division of child support establish a child support obligation when there is no child support order?

(1) When there is no order setting the amount of child support a noncustodial parent (NCP) should pay, the division of child support (DCS) serves a support establishment notice on the NCP and the custodial parent (CP). A support establishment notice is an administrative notice that can become an enforceable order for support if nobody requests a hearing on the notice.

(2) DCS may serve a support establishment notice when there is no order that:

- (a) Establishes the NCP's support obligation for the child(ren) named in the notice; or
- (b) Specifically relieves the NCP of a support obligation for the child(ren) named in the notice.

(3) Whether support is based upon an administrative order or a court order, DCS may serve a support establishment notice when the parties to a paternity order subsequently marry each other and then separate, or parties to a decree of dissolution remarry each other and then separate. The remaining provisions of the paternity order or the decree of dissolution, including provisions establishing paternity, remain in effect.

(4) Depending on the legal relationship between the NCP and the child for whom support is being set and on the type of child support obligation which is being established, DCS serves one of the support establishment notices listed in subsections (5), (6) or (7). WAC 388-14A-3102 describes which notice DCS uses to set the support obligation of a father who has signed a paternity acknowledgment or an affidavit of paternity.

(5) DCS may serve a notice and finding of financial responsibility (NFFR) under WAC 388-14A-3115. DCS uses this notice when the NCP's parentage of the child is based on:

- (a) The presumption arising from the existence of a marriage or a registered domestic partnership;
- (b) The entry of a court order adjudicating the parent-child relationship;
- (c) The entry of an adoption order;
- (d) The man's having signed and filed a paternity acknowledgment under RCW 26.26.300 through 26.26.375, unless the acknowledgment has been rescinded or successfully challenged; or
- (e) The woman's being the biological mother of, and having given birth to, the child.

WAC 388-14A-3810 Once an administrative child support order is entered, how long does the support obligation last?

(1) A noncustodial parent's obligation to pay support under an administrative order continues until:

- (a) A superior or tribal court order supersedes the order, either as provided by RCW 74.20A.055(7) or by the Uniform Interstate Family Support Act (UIFSA);
- (b) The order is modified under WAC 388-14A-3925;
- (c) The child reaches eighteen years of age;

- (d) The child is emancipated;
- (e) The child marries;
- (f) The child becomes a member of the United States armed forces;
- (g) The child or the responsible parent die;
- (h) A responsible stepparent's marriage is dissolved;
- (i) The parties to the order marry or remarry, as provided in WAC 388-14A-3100(3); or
- (j) A superior court order terminates the responsible parent's liability as provided under RCW 26.16.205.

(3) A noncustodial parent's obligation to pay support under an administrative order may be temporarily suspended when the:

- (a) Noncustodial parent (NCP) resides with the child for whom support is sought for purposes other than visitation;
- (b) NCP reconciles with the child and the custodial parent; or
- (c) Child returns to the residence of the NCP from a foster care placement, for purposes other than visitation.

(4) When the NCP's obligation to pay current support on a case is suspended under subsection (3) of this section, the division of child support (DCS) informs the NCP that the obligation is suspended, in writing, sent by regular mail to the NCP's last known address.

(5) If circumstances causing an NCP's support obligation to be temporarily suspended change, the support obligation resumes. DCS sends the NCP a notice that the obligation to make current support payments has resumed.

#### RCW 74.20A.055 Notice and finding of financial responsibility of responsible parent — Service — Hearing — Decisions — Rules.

(1) The secretary may, if there is no order that establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation or pursuant to an establishment of paternity under chapter 26.26 RCW, serve on the responsible parent or parents and custodial parent a notice and finding of financial responsibility requiring the parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or

modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. A custodian who has physical custody of a child has the same rights that a custodial parent has under this section.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: PROVIDED, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. The notice may be served upon the custodial parent who is the nonassistance applicant or public assistance recipient by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent.

(f) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.