

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Julius Sommers Jr.,
Petitioner**

v.

CASE NO: 19-TC-006

**Oneida Nation Child Support Agency,
Respondent**

ORDER

This case has come before the Oneida Trial Court, Honorable John E. Powless III presiding.

Appearing in person: Petitioner, Julius Sommers Jr.

Not appearing: Attorney Michelle L. Gordon for the Respondent: Oneida Nation Child Support Agency.

Statement of the Case

Petitioner is seeking a court order limiting the attachment of his per capita distribution to 15% of the payment to satisfy child support arrears. Petitioner is further seeking reimbursement of all child support overpayments.

Issue

Did the Petitioner present sufficient evidence to establish his claim?

Finding of Facts

1. The Court has subject matter, personal and territorial jurisdiction over this matter to address the issue of actions taken pursuant to the Per Capita law.
2. Petitioner filed a Civil Complaint on May 22, 2019.
 - a. Respondent filed an Answer and Request for Dismissal on June 11, 2019.
3. Notice was given to all entitled to notice.
 - a. The Oneida Nation Child Support Agency failed to appear and was found in default.
4. A hearing was held on June 25, 2019 at 9:00 a.m.
5. Petitioner failed to identify a legal basis in support of what he is seeking.

Principles of Law

1 O.C. 123.7-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to the Per Capita law and associated rules.

1 O.C. 123.4-9(a)(1)(A). If a Tribal member owes arrears in more than one (1) child support order, the Oneida Nation Child Support Agency shall equally divide the per capita payment based on the number of court orders under which arrears are owed.

7 O.C. 704.3-1(i). “Gross Income” shall mean any form of payment due to an individual regardless of source, including, but not limited to:

(3) Social Security disability and old age insurance benefits under 42 USC 401 to 433.

7 O.C. 704.9-3. In the event that an obligor is at least one (1) month delinquent in paying his or her child support obligation, he or she may be subject to the following enforcement actions:

(d) intercept of income and/or other payments;

(k) any other enforcement action included in this law or in a rule that is established under this law.

8 O.C. 803.29-2. When a party against whom a judgment for relief is sought has failed to appear, plead or otherwise defend as required in this Law or elsewhere, a default judgment may be granted by the Court upon the receipt of whatever evidence is deemed necessary to establish the claim.

Analysis

The Oneida Nation Child Support Agency failed to appear and was found in default. Based on this finding, and because Petitioner did not provide evidence deemed necessary to establish a claim in accordance with 8 O.C. 803.29-2, the Agency’s Request for Dismissal will not be ruled on.

Petitioner is seeking a court order limiting the attachment of his Per Capita distribution to 15% of the payment to satisfy child support arrears.

The Petitioner provided testimony that at the time a worker’s compensation settlement payment was awarded to him, he had more than one case for which he was paying child support. Both cases had arrears balances. In accordance with the Nation’s Child Support Law, a worker’s compensation settlement may be intercepted to satisfy arrears. Furthermore, a per capita distribution may be attached to satisfy arrears. If a case with an arrears balance is paid in full, the interception/attachment would be applied to the remaining cases with arrears. Petitioner’s argument to limit the attachment of his per capita distribution to 15% of his payment to satisfy child support arrears lacks a legal basis. Therefore, the court cannot grant Petitioner’s request.

Petitioner further seeks reimbursement of all child support obligation overpayments. In accordance with the Nation’s Child Support Law, 7 O.C. 704.9-3 and Per Capita Law, 1 O.C.

123.4-9(a)(1)(A), the Nation can intercept/attach income or other payments. Here, the Petitioner's income was intercepted/attached to go towards satisfying arrears. The law clearly allows for this. Therefore, the Petitioner has failed to state a claim upon which relief could be granted, and this matter is dismissed.

The Court encourages Petitioner to continue to meet with the Oneida Nation Child Support Agency to review the accounting of his child support and arrears payments.

Conclusion of Law

The Petitioner did not present sufficient evidence to establish his claim.

Order

1. Petitioner's complaint is DISMISSED due to failure to state a claim upon which relief can be granted.

IT IS SO ORDERED.

By the authority vested in the Oneida Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council and Order signed on July 3, 2019 in the matter of Julius Sommers Jr. v. Oneida Nation Child Support Agency. Case #19-TC-006.