

MONTEREY COUNTY DEPARTMENT OF CHILD SUPPORT
SERVICES
PO BOX 2059
SALINAS CA 93902-2059



05/22/2019

JAMES DOUGLAS UNTERSHINE
824 E PASS RD APT 3
GULFPORT MS 39507-3356

CSE Case Number: 0530020776-01

Custodial Party:
KAREN ATKINSON

Noncustodial Parent:
JAMES DOUGLAS UNTERSHINE

Court Case Number: DA37831

Dear JAMES DOUGLAS UNTERSHINE:

In response to your complaint issue(s) that you submitted to the Office of Child Support Enforcement (OCSE), enclosed are the following:

- 1) Letter by Lead Attorney, Lisa Ortiz.
- 2) Copy of California driver's license release form. Release form is for your California driver's license only.
- 3) Copy of Minute Order of 12/13/07 whereby a bench warrant for \$75,000 was issued.
- 4) Copy of Order After Hearing of 06/05/12 filed 06/26/12 whereby you are court-ordered to pay \$1,100 per month towards your arrears balance.

Thank you!

Please contact us at (866) 901-3212 with the above case number if you have any questions.

Sincerely,

BERTIE R SIMON-RICH
Child Support Representative



MONTEREY COUNTY



Department of Child Support Services

752 La Guardia Street
Post Office Box 2059
Salinas, CA 93902
www.co.monterey.ca.us/mcdcss

Phone: 866/901.3212
Facsimile: 831/796.0232

Jody Holtzworth, Director

May 22, 2019

James Douglas Undershrine
824 E. Pass Road, Apt. 3
Gulfport, MS 39507-3356

DCSS is in receipt of your inquiry to the Office of Child Support Enforcement regarding the following issues: interest, re-calling a bench warrant and the release of your CA driver's license. DCSS responds as follows:

Case History and Facts

On March 12, 1999, a Judgment of Dissolution was entered in the Superior Court of California, Los Angeles County, in case ND 019 431, wherein you were ordered to pay child support in the amount of \$1,479.00 per month, commencing December 1, 1998, for your three children.

The Judgment was registered in Monterey County on October 14, 1999 and again on February 3, 2009. The registrations were assigned a Superior Court of California, Monterey County, case number of DA37831.

On April 2, 2002 a criminal complaint was filed against you in Superior Court of California, Monterey County, in case MS212792A, for failure to support a child under California Penal Code§ 270. On December 1, 2005 you entered a plea of no contest and were sentenced and placed on probation for a period of 3 years with the following terms and conditions: obey all orders in Superior Court case No. DA37831; pay \$1,183.00 per month in current support and a minimum of \$300.00 per month on arrears; seek and maintain gainful employment and if employed less than 40 hours per week and not paying on support as ordered, to diligently seek work and report work search efforts, register with the California Employment Development Department and to provide monthly probation reports to Monterey County Department of Child Support Services. On March 27, 2006 a notice and declaration of violation of probation was filed with criminal court for failing to follow the terms of probation. On September 21, 2007, you admitted to violation probation and the matter of sentencing was set for Thursday, December 13, 2007 at 1:30 p.m. and were ordered to personally appear.

On December 13, 2007 you failed to appear at the Violation of Probation of Sentencing and a bench warrant was issued with bail set at \$75,000.00. The judge further ordered that the case cannot be re-calendared and that the defendant (you) need to post bail or surrender to Monterey County jail. This warrant remains outstanding.

On June 26, 2012, an Order After Hearing was entered in case DA37831 wherein child support arrears were set at \$232,862.70 (\$111,886.05 outstanding principal; \$120,976.65 outstanding interest) as of February 29, 2012. You were further ordered to pay child support arrears at the rate of \$1,100.00 per month, commencing July 1, 2012.

Your arrears balance as of April 30, 2019 is \$307,309.64 (including interest). The money is owed primarily to the custodial parent with approximately \$43,000.00 owed to the County of Monterey.

Governing Law and Policy

California Code of Civil Procedure §685.010 (a) states "[i]nterest on the arrears accrues at the legal rate of 10% per annum on the principal amount of a money judgment remaining unsatisfied."

California Code of Civil Procedure §695.221 states the following regarding credit of payments:

- Satisfaction of a money judgment for support shall be credited as follows:
 - (a) The money shall first be credited against the current month's support.
 - (b) Any remaining money shall next be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money shall be credited against the matured installments in the order in which they matured.
 - (c) Any remaining money shall be credited against the accrued interest that remains unsatisfied.
 - (d) In cases enforced pursuant to Part D (commencing with Section 651) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code, if a lump-sum payment is collected from a support obligor who has money judgments for support owing to more than one family, after the implementation of the California Child Support Automation System (CCSAS), all support collected shall be distributed pursuant to guidelines developed by the State Department of Child Support Services.
 - (e) Notwithstanding subdivisions (a), (b), and (c), a collection received as a result of a federal tax refund offset shall first be credited against the principal amount of past due support that has been assigned to the state pursuant to Section 11477 of the Welfare and Institutions Code and federal law and then any interest due on that past due support, prior to the principal amount of any other past due support remaining unsatisfied and then any interest due on that past due support.

(f) If federal law does not permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, the following shall be the order of distribution of child support collections through September 30, 2000, except for federal tax refund offset collections, for child support received for families and children who are former recipients of Aid to Families with Dependent Children (AFDC) program benefits or former recipients of Temporary Assistance for Needy Families (TANF) program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children since leaving the AFDC program or the TANF program and then the arrearages.

(3) Any remaining money shall next be credited against interest that accrued on arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then the arrearages.

(4) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then the arrearages.

(g) If federal law does permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, or effective October 1, 2000, whichever comes first, the following shall be the order of distribution of child support collections, except for federal tax refund offset collections, for child support received for families and children who are former recipients of AFDC program benefits or former recipients of TANF program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against the principal amount of the arrearages owed to the family or children since leaving the AFDC program or the TANF program and then the interest that accrued on those arrearages.

(3) Any remaining money shall next be credited against the principal amount of the arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then the interest that accrued on those arrearages.

(4) Any remaining money shall next be credited against the principal amount of the arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then the interest that accrued on those arrearages.

(h) This section shall become operative on January 1, 2009.

California Family Code 17520 states in pertinent part regarding the suspension and release of the driver's license:

...(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the federal Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, individual taxpayer identification numbers, or other uniform identification numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis...

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review to the local child support agency who certified the applicant's name. A request for review pursuant to this section shall be resolved in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the time specified in Section 17800.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency's notice of findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the

license suspension will go into effect after 150 days and that the local child support agency and, where appropriate, the court must have time to act within that period.

An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

- (1) Judicial review of the local child support agency's decision not to issue a release.
- (2) A judicial determination of compliance.
- (3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion.

This section shall not be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

- (1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.
- (2) Whether the petitioner is the obligor covered by the support judgment or order.
- (3) Whether the support obligor is or is not in compliance with the judgment or order of support.
- (4)(A) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

(B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

(C) If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a release in accordance with subdivision (I) to the appropriate board and the applicant. If the judicial review results in a finding by the court that the needs of the obligor warrant a conditional release, the court shall make findings of fact stating the basis for the release and the payment necessary to satisfy the unrestricted issuance or renewal of the license without prejudice to a later judicial determination of the amount of support arrearages, including interest, and shall specify payment terms, compliance with which are necessary to allow the release to remain in effect...

Conclusions

Monterey County DCSS is enforcing a valid money judgment and is charging interest pursuant to California law. The charging of interest is a state right and is not dictated by the federal government. 42 U.S.C.A. §654(21)(A) applies to late fees and not interest. California has opted to only charge interest and not to assess an additional late fee. Further, Monterey DCSS is distributing collections pursuant to California statute which is compliance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PWRORA) which governs the distribution of any support collected under the Child Support Enforcement Program under title IV-D of the Social Security Act. If you do not believe that the laws are fair, please see your U.S Representative for the House of Congress so as to change the laws.

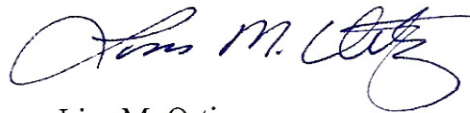
With regards to the bench warrant, a court ordered the warrant and clearly stated that you must either pay the bail amount or surrender to jail. Monterey DCSS and the Monterey County District Attorney's Office cannot help you with this. Please seek legal counsel regarding this issue.

As for the suspension of your California driver's license, Monterey DCSS is mandated to report a delinquency to the State DCSS so that the delinquency can be submitted to the Department of Motor Vehicles. Our records show that you have been delinquent of the current support order and the order regarding payment on arrears. Accordingly, the suspension of the license is valid. However, Monterey DCSS is willing to enter into an agreement to release your license as partial

court order payments on arrears have been made since November 2018. Monterey DCSS is willing to release your license on the condition that you pay the full amount of the court order payment on arrears which is \$1,100.00 per month. This means even if Social Security Administration is unable to pay that full amount from your benefits, you are to pay the remaining balance on your own.

As you may need time to adjust your monthly budget, we will release the license for 2 months; however, if you have not paid the \$1,100.00 for each of those months, your license will be suspended. If you do not like this offer, you may file a motion for judicial determination with the Superior Court of California, Monterey County. Monterey DCSS is not willing to negotiate based on your account balance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa M. Ortiz", with a stylized flourish at the end.

Lisa M. Ortiz
Monterey County DCSS
Lead Attorney