

No. 1-13-1351

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TAMIKA TAYLOR,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 CH 29030
)	
DIVISION OF CHILD SUPPORT SERVICES and)	
ILLINOIS FOSTER CARE,)	Honorable
)	Mary L. Mikva,
Defendants-Appellees.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Taylor concurred in the judgment.

O R D E R

- ¶ 1 *Held:* When plaintiff attempted to appeal the entry of an order of support more than five years after that order was entered, the administrative decision of the Director of the Illinois Department of Healthcare and Family Services finding plaintiff's appeal untimely and dismissing it based upon a lack of jurisdiction is affirmed.
- ¶ 2 *Pro se* plaintiff Tamika Taylor appeals from an order of the circuit court denying her complaint for administrative review. On appeal, plaintiff contends, *inter alia*, that the court erred in denying her relief because her request to modify a 2005 order of the Division of Child Support

Services of the Illinois Department of Healthcare and Family Services (the Department) was timely. We affirm.

¶ 3 The record reveals that in 2003 plaintiff's minor child was taken into the custody of the Illinois Department of Children and Family Services (DCFS). In June 2005, the Department sent plaintiff, as a non-custodial parent of the minor child, a support obligation notice, and requested that she appear for an interview on July 15, 2005 in order to determine the appropriate level of child support that she should pay. The notice explained that if plaintiff failed to provide the requested information, a default support order would be entered and that she could be ordered to pay both on-going support and support for the "period prior to the date that [plaintiff's] obligation is established." The notice stated that the initial support order is a final appealable order, "if an appeal request is not received in the 30 day appeal period."

¶ 4 On September 14, 2005, the Department entered a default administrative support order (2005 Support Order). The 2005 Support Order stated plaintiff had not appeared for an interview and did not provide sufficient financial information to assist in the determination of her ability to pay support. Therefore, plaintiff was ordered to pay \$428.52 per month in on-going support, and \$10,284.48 in retroactive support. Pursuant to the terms of the 2005 Support Order, plaintiff had 30 days from the mailing or delivery of the order to request an appeal.

¶ 5 On January 5, 2006, plaintiff filed an appeal, and an administrative hearing was held on March 30, 2006. On April 28, 2006, the Department dismissed plaintiff's appeal based upon a lack of jurisdiction because plaintiff did not file her appeal within 30 days. On June 1, 2006, plaintiff filed a *pro se* complaint for administrative review in the circuit court. After hearing argument, the circuit court upheld the Department's decision and dismissed plaintiff's complaint.

Although plaintiff filed an appeal from that judgment, plaintiff's appeal was ultimately dismissed for a want of prosecution. See *Taylor-Holmes v. DCFS-Division of Child Support*, No. 1-07-0428 (Sept. 4, 2007) (Dispositional Order).

¶ 6 In March 2011, plaintiff filed, *pro se*, an appeal with the Department and a "Motion to Terminate Current Administrative Default Support Order" seeking to terminate the 2005 Support Order because plaintiff was the minor child's custodial parent. At a June 2012 administrative hearing, plaintiff testified that she wanted the 2005 Support Order terminated because she had regained custody of her child. She also wanted all past due support to be terminated. A Department representative testified that because plaintiff had custody of the minor child she had no on-going support obligations, however, plaintiff still had a past-due balance for support that had been provided to the minor when the minor was in the custody of DCFS.

¶ 7 On June 28, 2012, the Department's director issued an order finding that the Department lacked jurisdiction over plaintiff's appeal because it was filed more than five years after the 2005 Support Order was issued on September 14, 2005, that is, "well-beyond the 30 day window" for an appeal. The order also found that the 2005 Support Order already had been "terminated" as plaintiff was the custodial parent of the minor child, but that the retroactive support award could not be "zeroed out" because it was owed for care provided to the minor while the minor was in DCFS custody. The order finally noted that plaintiff had previously appealed this issue.

¶ 8 Plaintiff then filed a *pro se* complaint for administrative review in the circuit court. After hearing argument, the court denied plaintiff relief as the appeal in the instant action was untimely when it was filed more than five years after the entry of the 2005 Support Order. The court further explained that plaintiff did not have ongoing support obligations; rather, her financial

obligation was an amount owed to DCFS for supporting the minor when the minor was in state custody. It is from this judgment that plaintiff appeals *pro se*.

¶ 9 On appeal, plaintiff contends that the circuit court erred when it denied her relief, as there is a material issue of fact as to whether she sought to modify or terminate the 2005 Support Order. She further contends that the Department erred when it calculated the amount of support due.

¶ 10 In administrative cases, this court reviews the decision of the administrative agency, rather than the determination of the circuit court. *Wade v. City of North Chicago Police Pension Board*, 226 Ill. 2d 485, 504 (2007).

¶ 11 Pursuant to section 104.101(a) of the Illinois Administrative Code (89 Ill. Adm. Code 104.101(a), amended at 36 Ill. Reg. 9086 (eff. June 11, 2012)), when a party is "aggrieved" by the Department's entry of an administrative support order or a determination or redetermination of past-due support, that party may petition for a hearing for release from or modification of the order or to contest the determination or redetermination. An administrative support order becomes "final" if the person receiving the order fails to timely seek an administrative hearing. See 305 ILCS 5/10-11 (2010) (a decision by the Department as a result of an administrative hearing shall become final and enforceable if not judicially reviewed under the Administrative Review law as provided in section 10-13 of the Public Aid Code (305 ILCS 5/10-13 (West 2010))). Absent a petition to the Department for release from or modification of the administrative order within 30 days of the date of mailing of the order, "the order shall become final and there shall be no further judicial or administrative remedy." See 305 ILCS 5/10-11, 10-12(a) (West 2010).

¶ 12 Final administrative decisions are appealable only as provided by law, and a party seeking administrative review must strictly comply with the relevant statutory provisions.

Thompson v. Department of Employment Security, 399 Ill. App. 3d 393, 395 (2010). This court reviews *de novo* an agency's determination that it lacks the jurisdiction to hear an untimely appeal. *Thompson*, 399 Ill. App. 3d at 394-95.

¶ 13 Here, the Department properly determined that it did not have jurisdiction to consider plaintiff's appeal of the 2005 Support Order because she did not file her appeal within 30 days of the mailing of the order, rather, she filed her appeal some five years later in March 2011. As the Department lacks jurisdiction to consider untimely appeals (*Thompson*, 399 Ill. App. 3d at 395), it properly dismissed plaintiff's appeal.

¶ 14 Although plaintiff argues before this court that her appeal was not untimely because she only sought to modify, rather than terminate, the 2005 Support Order, this argument fails for several reasons.

¶ 15 Initially, this court notes that plaintiff raises the modification argument for the first time on appeal, as she testified at the 2012 administrative hearing that she wanted all past-due support to be terminated. A party cannot raise an argument for the first time on appeal. See *Cook County Board of Review v. Property Tax Appeal Board*, 403 Ill. App. 3d 139, 144-45 (2010), quoting *Cook County Board of Review v. Property Tax Appeal Board*, 395 Ill. App. 3d 776, 786 (2009) (" 'arguments or objections that are not made during the course of the administrative hearing process but instead are raised for the first time on review are deemed waived' "). Even if this court was to reach the merits of plaintiff's argument, she appears to seek the modification of, *i.e.*, the elimination of, the retroactive payments outlined in the 2005 Support Order. However, this

court has previously determined that because "past-due child support payments are the vested right of the designated recipient" we lack the authority to modify amounts that have already accrued. *In re Marriage of Popa and Garcia*, 2013 IL App (1st) 130818, ¶ 28. Consequently, plaintiff's argument must fail.

¶ 16 Ultimately, the Department properly dismissed plaintiff's appeal of the 2005 Support Order because plaintiff did not file the appeal within 30 days of the mailing of the order. See 305 ILCS 5/10-11, 10-12(a) (West 2010). Accordingly, we affirm the Department's finding that it lacked jurisdiction to consider plaintiff's untimely appeal. See *Thompson*, 399 Ill. App. 3d at 395.

¶ 17 Affirmed.