

1 **Final agency action regarding decision below:**

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3 **REQHRG Date hearing requested**

4
5 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

6
7 In the Matter of:

No. 04C-xxxxx-CPS

8 **XXXXXXXX.,**

**ORDER DENYING MOTION FOR
PAYMENT OF ATTORNEY'S FEES
AND COSTS**

9
10 Appellant.

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13 Pending before the Office of Administrative Hearings is Appellant XXXXXXXX.'s
14 May 14, 2004 motion for payment of attorney's fees and costs pursuant to A.R.S. § 41-
15 1007, and the Arizona Department of Economic Security's (the "Department") June 4,
16 2004 response in opposition thereto. For the reasons set forth herein, Appellant's
17 motion is denied.

18 Background

19 Appellant appealed a decision by the Department to substantiate a claim that
20 Appellant had physically abused five-year-old xxxxxxxxxx. The Administrative Law
21 Judge heard evidence on November 4, 2003 and February 5, 2004. Both parties
22 submitted written closing memoranda. On March 15, 2004, the Administrative Law
23 Judge issued an Order in Appellant's favor. The Department accepted the
24 Administrative Law Judge's Order by Decision and Order dated April 14, 2004.
25 Thereafter, Appellant sought attorney's fees and costs pursuant to A.R.S. § 41-1007.

26 Applicable Law

27 A.R.S. § 41-1007 provides, in pertinent part:

28 A. Except as provided in section 42-2064, subsection G, a
29 hearing officer or administrative law judge shall award fees and
30 other costs to any prevailing party in a contested case or an
appealable agency action brought pursuant to any state
administrative hearing authority. For purposes of this subsection, a
person is considered to be a prevailing party only if he or she

Office of Administrative Hearings
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1. The agency's position was not substantially justified.

1 Copy mailed this _____ day of June, 2004 to:

2 David A. Berns, Director
3 Department of Economic Security - CPS
4 ATTN: Susan Hallett
5 1789 West Jefferson
6 Site Code 750A
7 Phoenix, AZ 85007

8 XXXXXX

9 XXXXXX, AZ XXXXX-XXXX

10 Lisa Woods, Esq.
11 Assistant Attorney General
12 Office of the Attorney General
13 1275 West Washington
14 Phoenix, AZ 85007

15 By _____

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