

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF:)	
)	OAH No. 09-0678-CSS
C. M. W.)	CSSD No. 001157746
_____)	

DECISION AND ORDER

I. Introduction and Procedural Background

On January 7, 2010 a formal hearing was held to consider the obligor, C. M. W.’, challenge to the Amended Administrative Child and Medical Support Order issued November 6, 2009 (November 2009 Order).¹ Ms. W. is the mother of three children, A. (age 18), J. (age 14) and T. (age 12), all of whom are in state custody and living with their aunt.² The children’s father is deceased. The November 2009 Order established Ms. W.’ ongoing child support obligation for the three children at \$302 per month and arrears from August 1, 2008 through November 30, 2009, in the amount of \$4,228.³

Ms. W. participated by phone. Andrew Rawls, Child Support Specialist, represented CSSD. The essence of Ms. W.’ appeal is that when she had custody of the children she received social security survivor benefits and that when she relinquished custody of the children she understood that she would not have to pay support because the aunt would receive the social security payment.⁴ The record remained open to provide Ms. W. with an opportunity to submit court orders regarding her parental rights and financial responsibility for the three children as well as the opportunity to provide post hearing briefs. CSSD timely filed its post hearing brief on February 22, 2010. The record closed on March 1, 2010 without further submission from Ms. W.

¹ Ex. 7.

² A. turned 18 after the November 2009 Order. CSSD will adjust the child support obligation as required under the Order.

³ Ex. 7.

⁴ W.Testimony.

II. Facts

Ms. W. relinquished custody to the state sometime after the children's father died. The state has placed the children with their aunt. While she had custody of the children, Ms. W. testified that she received social security benefits.⁵ She understood that when she lost custody she would no longer receive a payment because it would now go to the aunt for the children's support and this in turn would relieve her of any support obligation. Ms. W. believed this was part of a court order. She did not dispute the amount of income attributed to her by CSSD or the resulting amount of child support. Ms. W. challenges whether she is required to pay child support when the children receive social security survivor benefits.

III. Discussion

Civil Rule 90.3(i)(1) provides that:

When the state, or another third party entitled to child support, has custody of all children of a parent, the parent's support obligation to the third party is an amount equal to the adjusted annual income of the parent multiplied by the percentage specified in subparagraph (a)(2).⁶

A parent is obligated both by statute and at common law to support his or her children.⁷ This duty encompasses the obligation to reimburse others who support their children.⁸ The fact that Ms. W. no longer receives the social security payment does not change this duty. In essence Ms. W. is arguing that the payment she no longer receives but that the aunt does receive should be treated as a direct credit because that is what she believes was ordered by the court.

Credits for direct payments of child support are allowed even after an obligor has been notified that she should pay through CSSD, as long as the payments are not for a period when the children were receiving public assistance and the obligor provides clear and convincing evidence that the payments were made.⁹ Here the unchallenged evidence establishes that the children are in the custody of the state and that the state pays their aunt a guardian subsidy to care for them. Therefore, under the credit for direct payment rule, Ms. W. must pay child support to the state.

⁵ Because Ms. W. was referring to payments received as a result of her husband's death it is believed she is referring to social security survivor benefits.

⁶ Civil rule 90.3(a)(2) identifies the "percentage by which the non-custodial parent's adjusted income must be multiplied in order to calculate the child support award..."

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ *Id.*

⁹ 15 AAC 125.465.

Regardless, Ms. W. offers that there is a court order corroborating her understanding regarding social security payments and her child support obligation. In a child support hearing, the person who filed the appeal has the burden of proving by a preponderance of the evidence that CSSD's order is incorrect.¹⁰ The record remained open to provide Ms. W. with an opportunity to submit documents that may support her belief that because the children were receiving social security survivor benefits, the court relieved her of her duty to pay child support or that her parental rights were terminated. If Ms. W. locates such an order she should provide CSSD with a copy of the order. However, the only evidence in the record in support of Ms. W.' appeal is her own testimony. Without additional corroborating evidence, her testimony does not rise to the level of proof necessary to relieve her of her duty to support her children.

Ms. W. did not dispute the amount of income attributed to her for purposes of child support or that the amount of support was calculated incorrectly. Therefore, the November 2009 Order should remain in full force and effect.

IV. Conclusion

Ms. W. did not meet her burden of proving by a preponderance of the evidence that she is not obligated to provide support for her children as ordered in the Amended Administrative Child and Medical Support Order issued on November 6, 2009.

V. Child Support Order

The Amended Administrative Child and Medical Support Order issued on November 6, 2009 is affirmed.

DATED this 5th day of March, 2010.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹⁰ 15 AAC 05.030(h).

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 22nd day of March, 2010.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

[This document has been modified to conform to technical standards for publication.]