

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

IN THE MATTER OF: )

L. C. K. )

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) OAH No. 10-0117-CSS

) CSSD No. 001159367

**DECISION AND ORDER**

**I. Introduction**

The obligor, L. C. K., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 28, 2010. The Obligee children are E. and C., who are 10 and 8 years old.

The hearing was held on April 1, 2010. Mr. K. failed to appear; the custodian of record, H. E. W., participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on April 12, 2010.

Based on the record and after careful consideration, CSSD's January 28, 2010, Amended Administrative Child Support and Medical Support Order is affirmed, with one exception in that the 2010 and ongoing child support amount is set at \$259 per month, the same as for 2009.

**II. Facts**

*A. Procedural History*

Ms. W. applied for and began receiving public assistance benefits on behalf of E. and C. in August 2008.<sup>1</sup> On December 14, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. K.<sup>2</sup> He requested an administrative review and provided partial income information.<sup>3</sup> On January 28, 2010, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. K.'s ongoing child support at \$819 per month, with arrears of \$8,187 for the period from August 2008 through January 2010.<sup>4</sup> Mr. K. appealed on March 1, 2010, asserting he is currently unemployed, homeless and receiving food stamps.<sup>5</sup>

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<sup>1</sup> Exh. 6 at pg. 9.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exhs. 3-5.

<sup>4</sup> Exh. 6.

<sup>5</sup> Exh. 7.

*B. Material Facts*

Mr. K. did not participate in the hearing, so little is known about his circumstances. The evidentiary record indicates Mr. K. has worked at No Name Aviation and the ACC in the last two years. In 2008 he earned \$44,073.17, all of it from No Name Aviation.<sup>6</sup> In 2009 he received total income of \$10,197.24, most of that from No Name Aviation and the remainder from ACC.<sup>7</sup> On January 28, 2010, Mr. K. applied for and was granted food stamp benefits of \$371 per month.<sup>8</sup>

The Office of Administrative Hearings (“OAH”) sent the parties a notice of the date and time for the hearing by certified mail. Mr. K. received and signed for his notice. Just before the hearing began telephone calls were placed to the two numbers of record for him; one of the numbers is no longer in service and the other was not answered. Because Mr. K. received and signed for his notice, service was effective and the hearing was conducted without his participation.<sup>9</sup>

**III. Discussion**

Mr. K. filed an appeal of a child support order and he received and signed for the certified notice of the date and time for the hearing that was sent to him. However, he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.<sup>10</sup> This obligation begins when the child is born, but by regulation, CSSD only collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).<sup>11</sup>

As the person who filed the appeal, Mr. K. has the burden of proving by a preponderance of the evidence that the child support amount calculated by CSSD in its Amended Administrative

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<sup>6</sup> Exh. 8 at pg. 1.

<sup>7</sup> *Id.*

<sup>8</sup> Exh. 7 at pg. 9.

<sup>9</sup> “If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.” 15 AAC 05.010(c).

<sup>10</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>11</sup> 15 AAC 125.105(a)(1)-(2).

Child Support and Medical Support Order is incorrect.<sup>12</sup>

In this case, Ms. W. applied for and began receiving public assistance benefits on behalf of E. and C. in August 2008.<sup>13</sup> Thus, that is the month in which Mr. K.'s obligation to pay support for the children through CSSD begins.

Civil Rule 90.3(a)(1) provides that an Obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions for items such as taxes and Social Security. CSSD correctly calculated Mr. K.'s 2008 and 2009 child support amounts at \$825 and \$259 per month, respectively, using his actual income for those two years.<sup>14</sup> The 2010 child support amount, however, should be reexamined. For that year, CSSD set Mr. K.'s child support at \$819 per month, which was calculated from an income figure of \$43,680.<sup>15</sup> CSSD indicated that this income amount for 2010 was based on Mr. K.'s "demonstrated ability to earn \$21 per hour as reported by the Department of Labor."<sup>16</sup>

When CSSD calculates an ongoing support obligation, its regulations state that the agency is to use the obligor parent's "total annual income that the parent is likely to earn or receive when the child support is to be paid."<sup>17</sup> In this process, CSSD must use "the best available information," which, if current information is not at hand, may include "the parent's wage rate at a previous job."<sup>18</sup> In Mr. K.'s case, CSSD used \$21 per hour for full-time work (2080 hours) to calculate for his 2010 and ongoing calculation.<sup>19</sup> He most likely earned that hourly wage at No Name Aviation although that information is not in the record. The wage rate of \$21 per hour technically may be allowed by CSSD's regulations, but it is not the "best available information" because after he left No Name Aviation, Mr. K. worked during the second half of 2009 at the ACC, where he earned only \$13.50 per hour.<sup>20</sup> Based on the entire record in this appeal, there is virtually no evidence to suggest that Mr. K. would be returning to his

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12 15 AAC 05.030(h).

13 Exh. 6 at pg. 9.

14 See Exh. 6 at pgs. 6-7 and Exh. 8 at pg. 1.

15 Exh. 6 at pg. 8.

16 See Exh. 6 at pg. 4.

17 15 AAC 125.050(c).

18 15 AAC 125.050(c)(4).

19 Exh. 4 at pg. 6.

20 Exh. 5 at pgs. 2-7.

previous employment at No Name Aviation in 2010 and earning \$21 per hour.<sup>21</sup> Therefore, referring back to 15 AAC 125.050(c), there is insufficient evidence that Mr. K. is “likely to earn or receive” \$21 per hour for 2080 hours in 2010.<sup>22</sup> Similarly, there would be scant justification for using Mr. K.’s ACC wage of \$13.50 per hour times 2080 hours because at his last employment he was not working full-time.

In the absence of more information, or of a finding that Mr. K. is voluntarily and unreasonably unemployed, CSSD must use the “best available information,” which in this case is Mr. K.’s most recent income. This he earned in 2009, so Mr. K.’s 2009 calculation of \$259 per month should be carried forward for 2010.

#### **IV. Conclusion**

Mr. K. proved by a preponderance of the evidence that CSSD incorrectly calculated his 2010 child support.<sup>23</sup> CSSD correctly calculated Mr. K.’s 2008 and 2009 support amounts at \$825 and \$259 per month, respectively, and the 2010 and ongoing calculation is now correct at \$259 per month. These figures should be adopted.

#### **V. Child Support Order**

- Mr. K. is liable for child support in the amount of \$825 per month for August 2008 through December 2008; \$259 per month for 2009; and \$259 per month for January 2010 through May 2010, and ongoing.
- All other provisions of the January 28, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 3<sup>rd</sup> day of May, 2010.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>21</sup> According to Ms. W., Mr. K. was fired from No Name Aviation for drinking and using pills. She further said she thought he could return to work there if he “got cleaned up,” but there is no evidence that he has done so.

<sup>22</sup> Emphasis added.

<sup>23</sup> See 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 21<sup>st</sup> day of May, 2010.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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