

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

IN THE MATTER OF: )

R. A. M. )

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) OAH No. 10-0125-CSS

) CSSD No. 001143732

**DECISION AND ORDER**

**I. Introduction**

The obligor, R. A. M., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 23, 2010. The obligee child is L., who is three years old.

The hearing was held on April 6, 2010. Both Mr. M. and the custodian, D. E. K., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on April 20, 2010.

Based on the record and after careful consideration, CSSD correctly calculated Mr. M.'s child support at \$356 per month, effective June 1, 2008. Since that is the amount set forth in the agency's Amended Administrative Child Support and Medical Support Order, the order is affirmed.

**II. Facts**

*A. Procedural History*

Ms. K. applied for and began receiving public assistance benefits on L.'s behalf in June 2008.<sup>1</sup> On January 11, 2010, CSSD served an Administrative Child Support and Medical Support Order on Mr. M.<sup>2</sup> He requested an administrative review.<sup>3</sup> On February 23, 2010, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. M.'s ongoing child support at \$356 per month, with arrears of \$7,476 for the period from June 2008 through February 2010.<sup>4</sup> Mr. M. appealed on March 12, 2010, asserting he no longer earns

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<sup>1</sup> Exh. 7 at pg. 9.

<sup>2</sup> Exh. 5.

<sup>3</sup> Exh. 6.

<sup>4</sup> Exh. 9.

the amount used to calculate his child support obligation.<sup>5</sup> He also filed tax and other income information for 2008 and 2009.<sup>6</sup>

*B. Material Facts*

Mr. M. is a retired military member with a service-related disability which he testified is due to post-traumatic stress disorder.<sup>7</sup> He was previously rated 50% disabled but his rating has been increased to 80%.<sup>8</sup> Mr. M. is currently unemployed but he is receiving ongoing services from the local offices of the Veterans Administration (VA) and also he is on the waiting list for housing at the VA domiciliary in Anchorage.

In 2008, Mr. M. received wages totaling \$12,808.36,<sup>9</sup> unemployment benefits of \$696<sup>10</sup> and disability payments totaling \$9,356,<sup>11</sup> for total income of \$22,860.36. A calculation performed using these income figures yields a child support amount of \$356 per month.<sup>12</sup>

In 2009, Mr. M. received wages totaling \$12,650.40,<sup>13</sup> disability benefits of \$9,840,<sup>14</sup> and the \$1,305 PFD, for total income of \$23,795.40. A calculation using these income amounts yields a child support figure of \$372 per month.<sup>15</sup> This is a 4.5% increase over the 2008 amount of \$356 per month.

As of January 2010, Mr. M. began receiving \$1,507 per month in disability, which totals \$18,084 per year plus the PFD of \$1,305, for total income of \$19,389. A calculation using this income amount yields a child support figure of \$323 per month.<sup>16</sup> This is a 10.2% decrease from the 2008 amount of \$356 per month.

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<sup>5</sup> Exh. 10.

<sup>6</sup> *Id.*

<sup>7</sup> Obligor's documents received on March 30, 2010, at pg. 2.

<sup>8</sup> *Id.*

<sup>9</sup> Exh. 11 at pg. 1.

<sup>10</sup> Exh. 11 at pg. 2.

<sup>11</sup> Exh. 13 at pg. 2. The monthly amount of \$776 equals \$9,312 when multiplied times 12. However, Mr. M. began receiving the 2009 amount of \$820 per month in December 2008. Exh. 13 at pg. 3. Thus, his total disability benefit for 2008 equals  $776 \times 11 = \$8,536 + \$820 = \$9,356$ .

<sup>12</sup> Exh. 9 at pg. 6.

<sup>13</sup> Exh. 11 at pg. 1.

<sup>14</sup> Exh. 13 at pg. 4.

<sup>15</sup> Exh. 14.

<sup>16</sup> Attachment A.

### III. Discussion

As the person who filed the appeal, Mr. M. has the burden of proving by a preponderance of the evidence that the child support amount calculated by CSSD in its Amended Administrative Child Support and Medical Support Order is incorrect.<sup>17</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>18</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>19</sup> In this case, Ms. K. applied for and began receiving Medicaid benefits on L.'s behalf in June 2008.<sup>20</sup> Thus, that is the first month for which Mr. M. is obligated to pay support for her through CSSD.

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 things such as taxes and Social Security. The commentary to Civil Rule 90.3 specifically requires that a parent's disability benefits be included in his or her income for the purpose of calculating a child support obligation.<sup>21</sup>

In this case, CSSD used Mr. M.'s wages, disability benefits and the PFD, in addition to unemployment benefits he received to calculate his child support obligation for each year at issue -- 2008 through 2010 and ongoing. The 2008 and 2009 amounts, \$356 and \$372 per month, respectively, were correctly calculated. However, the 2010 calculation of \$335 per month has been adjusted: CSSD determined that Mr. M.'s annual income would be \$20,109, which is taken from his disability of \$18,084 and the PFD of \$1,305, plus an additional amount of \$720<sup>22</sup> that reflects benefits L. should be entitled to receive due to Mr. M.'s disability.<sup>23</sup> But Mr. M.'s testimony indicated that he had just processed the paperwork for L.'s benefits and he did not know when they would begin. Therefore, because the specific amount and effective date is still

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17 15 AAC 05.030(h).

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

19 15 AAC 125.105(a)(1)-(2).

20 Exh. 6 at pg. 9.

21 Civil Rule 90.3, Commentary III.A.

22 \$60 per month x 12 = \$720 per year.

23 See Exh. 15 at pg. 1.

unknown, the child's benefits cannot be used in the 2010 child support calculation.<sup>24</sup> The 2010 child support is now correctly calculated at \$323 per month based on Mr. M.'s current disability benefits and the PFD.

CSSD's amended order used the 2008 child support calculation of \$356 per month for both 2009 and 2010.<sup>25</sup> This is based on the authority in CSSD regulation 15 AAC 125.105(e), which states in essence that after CSSD has calculated a parent's support obligation for the first year at issue, it need not adjust the support amount for following years unless the parent's income would cause the calculation to be 15% higher or lower than the original amount. Since neither the 2009 nor 2010 support amounts constitute a 15% change from \$356 per month, that figure should apply to each year in this case.

#### **IV. Conclusion**

Based on his actual income, Mr. M.'s child support is correctly calculated at \$356 per month for June 2008 through May 2010, and ongoing. Since neither the 2009 calculation of \$372 nor the 2010 figure of \$323 is more than 15% different than the 2008 amount, Mr. M.'s child support should be set at \$356 per month for each year at issue. In the event L. begins receiving a benefit payment in the future due to Mr. M.'s disability, his ongoing child support may have to be modified.

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

- Mr. M. is liable for child support in the amount of \$356 per month for June 2008 through May 2010, and ongoing;
- All other provisions of the February 23, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 14<sup>th</sup> day of May, 2010.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>24</sup> Mr. M.'s support obligation may have to be modified when L.'s payments commence. In addition, it stands to reason that since L.'s benefits have not been used in the calculation, Mr. M.'s monthly child support should not be increased by \$60 per month to reflect the fact that he was not yet giving her the money. See CSSD's Post-Hearing Brief at pg. 1.

<sup>25</sup> Exh. 9 at pg. 7.

**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 1<sup>st</sup> day of June, 2010.

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

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