

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

IN THE MATTER OF: )

M. W. S. )

---

) OAH No. 10-0360-CSS  
) CSSD No. 001162367  
)

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor M. W. S.'s appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 22, 2010. The obligee children are Q., age 2, and M., age 1. The custodial parent is C. M. Z..

The formal hearing was held on August 10, 2010. Mr. S. did not appear in person or by telephone; Ms. Z. appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on August 20, 2010.

Based on the record and after careful consideration, CSSD's Amended Administrative Child and Medical Support Order is affirmed, except that Mr. S.'s child support is suspended for March, April and May of 2010 when he had physical custody of the children.

**II. Facts**

*A. Background*

This case arises in March 2008, when Ms. Z. began receiving public assistance and/or Medicaid benefits on Q.'s behalf.<sup>1</sup> On March 4, 2010, CSSD issued an Administrative Child Support and Medical Support Order for Mr. S. to pay support.<sup>2</sup> He requested an administrative review.<sup>3</sup> On April 22, 2010, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. S.'s ongoing support at \$344 per month, with arrears of \$2,665 for the period from March 2008 through April 2010.<sup>4</sup> Mr. S. filed an appeal on June 28, 2010, which

---

<sup>1</sup> Pre-Hearing Brief at pg. 1.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 3.

did not list any specific appeal issues.<sup>5</sup> Mr. S.'s request for an administrative review claimed that he has custody of both children and they live with him when he is not in jail.<sup>6</sup>

On July 23, 2010, the Office of Administrative Hearings ("OAH") sent the parties a notice of the date and time for the hearing by certified mail. Mr. S.'s notice was returned to the OAH by the U.S. Postal Service because he was not at that address and they were unable to forward the notice. Ms. Z.'s notice was also returned to the OAH but she subsequently provided a telephone number to be called for the hearing.

Mr. S. could not be reached for the August 10, 2010, formal hearing. A call was placed to his telephone number of record and a message was left for him to call the OAH, but he has not responded. Since notice of the hearing had been sent to Mr. S. by certified mail at his last known address, service of the notice of hearing was found to be effective and the hearing was conducted without his participation.<sup>7</sup> Ms. Z. appeared by telephone and provided testimony.

*B. Findings*

Based on the record as a whole, the following facts are established by a preponderance of the evidence:

1. Notice of the date and time for the hearing was sent by certified mail to Mr. S. at his last-known address, but the notice was returned by the U.S. Postal Service;
2. Mr. S. did not appear for the formal hearing and did not answer a telephone call placed to his contact number; a message was left for him to contact the OAH, but he has not done so;
3. Mr. S. was incarcerated for 153 days in 2008, 3 days in 2009, and 35 days in 2010; his 2010 incarceration ended on February 26<sup>th</sup>;
4. In 2008, Mr. S.'s income was \$5,821.06;<sup>8</sup> CSSD used that figure to calculate his child support at \$94 per month for one child;<sup>9</sup>
5. In 2009, Mr. S.'s income was \$3,373.92;<sup>10</sup> CSSD used that figure to calculate his child support at \$53 per month for one child and \$72 per month for two children as of October 2009, the month M. was born;<sup>11</sup>

---

<sup>5</sup> Exh. 4.

<sup>6</sup> Exh. 2 at pg. 1.

<sup>7</sup> See 15 AAC 05.010(c).

<sup>8</sup> Exh. 3 at pg. 7.

6. CSSD imputed the minimum wage to Mr. S. for 2010 – this equals annual income of \$17,425, including the PFD – and it yields a child support amount of \$344 per month for two children and \$255 per month for one child;<sup>12</sup>

7. Mr. S. had custody of the obligees Q. and M. from the time of his release on February 26, 2010, through May 25, 2010, when they returned to the custody of Ms. Z. by means of court litigation.<sup>13</sup>

### III. Discussion

Mr. S. filed an appeal of a child support order but he failed to appear for the formal 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. In a child support matter, the person who files the appeal has the burden of proof.<sup>14</sup> Mr. S. filed the appeal here, so he must prove his case by a preponderance of the evidence, meaning he must show that the fact being asserted more likely than not is true.<sup>15</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>16</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources."

If the children receive public assistance, the noncustodial parent is obligated to reimburse the state for those benefits – in the form of child support payments calculated pursuant to Civil Rule 90.3 based on the parent's income.<sup>17</sup> CSSD 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 children.<sup>18</sup> In this case, Ms. Z. began receiving Medicaid and/or public

---

9

*Id.*

10 Exh. 3 at pg. 8.

11 Exh. 3 at pgs. 6 & 8.

12 Exh. 3 at pg. 9.

13 Testimony of Ms. Z.

14 15 AAC 05.030(h).

15 2 AAC 64.290(e). The phrase "more likely than not" is often described as being anything over 50% of the weight of the evidence.

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

17 AS 25.27.120(a).

18 15 AAC 125.105(a)(1)-(2).

assistance on Q.'s behalf in March 2008, the month she was born, and on M.'s behalf in October 2009, the month he was born.<sup>19</sup>

It appears that Mr. S.'s primary issue on appeal concerns custody of the children. His appeal form did not list any specific issues, but Mr. S.'s request for an administrative review claimed that he has custody of both children and they live with him when he is not in jail.<sup>20</sup> Ms. Z. contradicted Mr. S.'s claim, testifying that she has always had custody of the children except for a couple of weeks before he got out of jail, when they stayed with his mother, then from February 26<sup>th</sup> through May 25<sup>th</sup>, when Mr. S. had them in his sole custody after being released.

Ms. Z.'s testimony was specific and credible. Mr. S., on the other hand, presented no evidence other than general assertions that the children live with him when he's not in jail.<sup>21</sup> Mr. S. did not appear at the hearing, nor has he made any attempt to contact the OAH in response to the voice mail message left for him on the day of the hearing. Mr. S. has not established that he ever had sole or joint physical custody of Q. and M. other than the three-month period after his February 2010 release. Thus, he is obligated to pay support for his children: for Q. as of March 2008 forward, and for both Q. and M. as of October 2009 forward.

Ms. Z. did confirm that Mr. S. had the children in his custody for three months after getting out of jail, so his support obligation for the children should be suspended for the months of March, April and May of 2010.

#### **IV. Conclusion**

Mr. S. did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). He is thus obligated to pay support for Q. and M. as determined by CSSD. Based on Ms. Z.'s testimony, Mr. S. had the children for three months period after his February 2010 release from jail, so his support obligation for the children should be suspended for the months of March, April and May of 2010. Finally, Mr. S. did not challenge CSSD's calculations, so they should be affirmed.

---

<sup>19</sup> Exh. 3 at pg. 6.

<sup>20</sup> Exh. 2 at pg. 1. According to CSSD, Mr. S. was incarcerated for 153 days in 2008, 3 days in 2009 and 35 days in 2010, ending on February 26<sup>th</sup>. Pre-Hearing Brief at pg. 1.

<sup>21</sup> These claims were from Mr. S.'s request for an administrative review. It is not known whether these were his issues on appeal; his hearing request states "I hereby request formal hearing for back payments." Exh. 4.

**V. Child Support Order**

- CSSD’s June 2, 2010, Amended Administrative Child and Medical Support Order is affirmed in all respects, except that Mr. S.’s child support is suspended for the months of March, April and May 2010, when he had sole physical custody of Q. and M.;
- Mr. S.’s child support of \$344 per month is reinstated as of June 1, 2010, and ongoing.

DATED this 13<sup>th</sup> day of September, 2010.

By: Signed  
Kay L. Howard  
Administrative Law Judge

**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 4<sup>th</sup> day of October, 2010.

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

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