

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

IN THE MATTER OF:)

D. P. H.)

OAH No. 10-0408-CSS

CSSD No. 001159202

DECISION AND ORDER

I. Introduction

The obligor, D. P. H., appeals an Amended Administrative Child and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on July 22, 2010. The obligee child is L., who is 2 years old. The other party to the case is the child’s mother, W. N. W.

The formal hearing was conducted during four separate proceedings and concluded on November 1, 2010. Mr. H. participated by telephone or through his attorney, Richard K. Payne. Ms. W. did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on November 26, 2010.

II. Facts

A. History

Ms. W. began receiving public assistance benefits on L.’s behalf beginning in August 2008.² CSSD initiated this establishment action against Mr. H. on April 26, 2010, via service on him of an Administrative Child Support and Medical Support Order.³ He requested an administrative review and provided financial information.⁴ On July 22, 2010, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. H.’s ongoing child support at \$447 per month, with arrears of \$10,107 for the period from August 2008 through July

¹ At least two voicemail messages were left on Ms. W.’s voicemail, but she has not responded. Mr. H. believes she is currently out of state.

² Pre-Hearing Brief at pg. 1.

³ Exh. 1.

⁴ Exhs. 2-4.

2010.⁵ Mr. H. appealed on August 11, 2010, claiming he and Ms. W. had a custody agreement and that he had filed an action for custody.⁶

B. Material Facts

CSSD and Mr. H., through counsel, stipulated to the following facts:

1. For the period from **August 19, 2008, through January 21, 2009**, the parties exercised 50-50 shared custody of L. Ms. W. resided in a residential treatment center and Mr. H. was employed on the North Slope. Custody of the child went back and forth between the parties depending on Mr. H.'s work schedule. His child support should be calculated based on the 50-50 shared custody formula for the months of August 2008 through January 2009;

2. Ms. W. was released from B. Memorial on January 21, 2009, and apparently left the state in March 2009. The months of February and March 2009 remain unresolved, as will be discussed below;

3. From **April 2009 through January 2010**, Mr. H. had primary custody of L.; as a result, he is not liable for child support during this period of time;

4. From **February 2010 through August 2010**, the parties exercised 50-50 shared custody of L. pursuant to a court order issued on February 5, 2010. Mr. H.'s child support should be calculated pursuant to the shared custody formula for these months;

5. On **August 24, 2010**, the court issued an order providing that Ms. W. would have supervised visitation only with L. Mr. H. has had sole custody of L. since a few days before the court's order and his ongoing child support obligation should be suspended as of September 1, 2010.

III. Discussion

A. Effective date of obligation

A parent is obligated both by statute and at common law to support his or her children.⁷ This obligation begins when the child is born, but in order to simplify collections, CSSD adopted a regulation that provides it will only collect 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

⁵ Exh. 7.

⁶ Exh. 8.

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

child(ren).⁸ In this case, public assistance benefits began to be paid on L.'s behalf in August 2008, the month of his birth, so under 15 AAC 125.105(a)(1), that is when Mr. H.'s obligation to pay support through CSSD begins.

Two issues remain unresolved by the parties: first, they were not able to stipulate to the factual events that occurred during the period of time referenced in item number two above, from January 21, 2009 through March 2009. Mr. H. testified that when Ms. W. left the treatment center, she moved in with him and they lived together through March 2009, at which time she vacated the residence and apparently the state. L. was left in the obligor's custody, as stipulated by the parties and as referenced in item number three above. Contrary to the obligor's testimony, CSSD stated that records from the division of public assistance indicate when Ms. W. left B. Memorial, she moved in with her mother, not the obligor. Because of this discrepancy in the factual background of the case, the parties have requested a ruling regarding this period of time and whether Mr. H. is liable for support for February and March of 2009.

The second issue unresolved by the parties involves Mr. H.'s request for credit for a direct payment of support to Ms. W. in the amount of \$500 on March 20, 2009.⁹ CSSD's position is that he should not receive the credit if the parties are found to have been cohabitating from January 2009 through March 2009, as he would not be obligated to pay support through CSSD in March 2009.

The preponderance of the evidence is that the obligor and Ms. W. cohabitated in his residence from January 21, 2009, when she left B. Memorial, through March 2009. The parties were both custodial parents for that period of time and as a result, Mr. H. is not liable for support for February and March 2009. The conclusion that flows from this finding is that Mr. H. is not entitled to credit for direct child support for the \$500 check he paid Ms. W. on March 20, 2009. He was not liable for support during that month and so should not receive credit for paying it. To the extent this ruling contradicts any oral findings made on the record, the oral findings are superseded by this written decision and order.

B. Child support calculation

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 such as taxes and Social

⁸ 15 AAC 125.105(a)(1)-(2).

Security. Following the hearing, CSSD submitted a Post-Hearing Brief with revised child support calculations. Even though CSSD agreed at the beginning of the hearing that the parties exercised 50-50 shared custody of L. from August 2008 through January 2009, the division submitted a primary custody support amount of \$825 for those months.¹⁰ Mr. H.'s support obligation for each of those six months should reflect the parties' 50-50 shared custody, as agreed to by CSSD.

For the shared custody calculation, Ms. W.'s income for 2008 should be based on the Alaska minimum wage of \$7.75 per hour, the same as the 2010 calculation. Multiplying this hourly wage times 2080 hours, the number of hours a full-time employee usually works in one year, results in annual income of \$16,120. Adding the PFD and energy rebate of \$3,869 results in total annual income of \$19,389, which, when inserted into CSSD's online child support calculator,¹¹ results in a primary custody support amount of \$282 per month for one child.¹²

Mr. H.'s 2008 income has previously been determined by CSSD to have been \$61,359.48, plus the PFD and energy rebate, for total annual income of \$64,628.48.¹³ CSSD has previously calculated the primary custody support obligation from this annual income figure to be \$825 per month.¹⁴

In order to complete the 2008 calculation, the parties' respective monthly support amounts are inserted into the shared custody formula, as shown in Attachment B. The result is a child support amount of \$407 per month for Mr. H. This figure should replace the \$825 per month amount CSSD entered into the summary of support obligation filed with its Post-Hearing Brief on November 3, 2010.¹⁵

As noted above, the parties also exercised shared custody of L. during a seven-month period from February 2010 through August 2010. CSSD prepared a shared custody calculation for those months, using an estimation of Mr. H.'s annual income derived from online sources provided by the Alaska Department of Labor and Workforce Development, and an estimation of

⁹ See Exh. 8 at pg. 4.

¹⁰ Exh. 10.

¹¹ <http://www.childsupport.alaska.gov>

¹² Attachment A.

¹³ Exh. 7 at pg. 8.

¹⁴ *Id.*

¹⁵ Exh. 10.

Ms. W.'s potential income based on the minimum wage.¹⁶ The resulting shared custody calculation is \$284.15 per month, to be paid by Mr. H.¹⁷ The obligor does not dispute this figure and it should be adopted.

IV. Conclusion

Mr. H. met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). The parties successfully settled all but two of the issues in this appeal. The remaining issues are now resolved and Mr. H.'s child support obligation has been corrected. These final support amounts should be adopted.

V. Child Support Order

- Mr. H. is liable for child support for L. in the amount of \$407 per month from August 2008 through January 2009; and \$284.15 per month for February 2010 through August 2010;
- Mr. H. is not liable for support from February 2009 through January 2010 because he was either a custodial parent with Ms. W. or L.'s primary custodian during that period of time;
- Ongoing child support as of September 1, 2010, is suspended based on the court's order of August 24, 2010;
- All other provisions of the July 22, 2010, Amended Administrative Child and Medical Support Order remain in full force and effect.

DATED this 16th day of December, 2010.

By: Signed _____
Kay L. Howard
Administrative Law Judge

¹⁶ Exh. 9 at pgs. 2 & 3.

¹⁷ Exh. 9 at pg. 1.

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 3rd day of January, 2011.

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

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