

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

IN THE MATTER OF:)

M. K. K.)

) OAH No. 10-0418-CSS

) CSSD No. 001163978

DECISION AND ORDER

I. Introduction

The obligor, M. K. K., has appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on July 28, 2010. The obligee child is M., who is 2 years old. The custodian of record is S. A. G.

The formal hearing was held on September 7, 2010. Both Mr. K. and Ms. G. appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 7, 2010.

Based on the record and after careful consideration, Mr. K. is liable for child support for M. in the amount of \$50 per month from August 2008 through March 2009. Ongoing support is suspended as of April 2009 because Mr. K. joined the household in March 2009, and shall remain suspended so long as Mr. K. remains a member of the household.

II. Facts

A. Procedural History

On May 20, 2010, CSSD issued an Administrative Child and Medical Support Order to Mr. K.¹ He requested an administrative review.² Following the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on July 28, 2010, that set Mr. K.'s ongoing child support at \$54 per month, with arrears of \$1,296 for the period from August 2008 through July 2010.³ Mr. K. filed an appeal on August 12, 2010, asserting that he did not enter the country until March 17, 2009, so he did not even get a PFD.⁴

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.

B. Material Facts

Mr. K. is from Pakistan.⁵ He and Ms. G. were married in that country on May 7, 2007. Sometime thereafter Ms. G. returned to Alaska and gave birth to their son M. in August 2008. Mr. K.'s passport indicates he entered the United States on March 17, 2009.⁶ He now lives with Ms. G. in No Name City. Their second child, R., was born in January 2010. Mr. K. is not employed – he remains at home and provides day care for the parties' children. Ms. G. is employed and supports the family financially.

III. Discussion

CSSD acknowledged during the hearing that Mr. K.'s ongoing child support should be suspended as of April 2009, the first month after he arrived in Alaska and took up residence with Ms. G. and M. The 8-month period before Mr. K. entered the United States, from August 2008 through March 2009, remains at issue. CSSD asserts that he is liable for support for those 8 months. Ms. G. claims that Mr. K. should not be obligated to pay support because he was unemployed and not even living in this country until March 2009.

A parent is obligated both by statute and at common law to support his or her children.⁷ If the children receive public assistance, the noncustodial parent is obligated to reimburse the state for those benefits – in the form of child support calculated pursuant to Civil Rule 90.3 based on the parent's income.⁸ CSSD collects support from the date the custodial parent began receiving public assistance or foster care benefits on behalf of the children.⁹

In this case, Ms. G. began receiving public assistance benefits on M.'s behalf in August 2008, the month that he was born.¹⁰ Regardless of whether Mr. K. was employed or living in this country, he is obligated to reimburse the State of Alaska for M.'s support during the time he was not living with his son. Thus, Mr. K. is obligated to pay support for M. from August 2008 through March 2009, the month he arrived in Alaska and began living with Ms. G.

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 taxes. CSSD calculated Mr. K.'s child support at \$54 per month based on the agency's assumption that he

⁵ The facts are taken from the testimony of both Mr. Khan and Ms. Graham, unless otherwise stated.

⁶ Exh. 4 at pg. 3.

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

⁸ AS 25.27.120(a).

⁹ 15 AAC 125.105(a)(1)-(2).

¹⁰ Exh. 3 at pg. 7.

received the Permanent Fund dividend (PFD) in 2008 that totaled \$3,269.¹¹ This figure is not correct because Mr. K. did not receive a PFD in 2008, 2009, nor will he receive one in 2010. Mr. K. was living in Pakistan in 2008 and he did not have an income. Even so, he is still obligated to pay at least a minimum amount of child support. A child support order of \$50 per month is the minimum allowed under Alaska law, and it may not be reduced below that amount.¹² The \$50 per month minimum order has been upheld by the Alaska Supreme Court, which states that a non-custodial parent may lack the present ability to pay child support, and may even be incarcerated, but that will not excuse the child support obligation.¹³ Thus, Mr. K.'s child support order cannot be set below \$50 per month.

IV. Conclusion

Mr. K. is obligated to reimburse the State of Alaska for the support provided to M. before Mr. K. began living in the home with Ms. G. and their child. His support should be set at \$50 per month, the minimum amount allowed under Alaska law, for the period from August 2008 through March 2009. Ongoing support should be suspended as of April 2009 because Mr. K. joined the household in March 2009.

V. Child Support Order

1. Mr. K. is liable for child support for M. in the amount of \$50 per month from August 2008 through March 2009;
2. Ongoing support is suspended as of April 2009 because Mr. K. joined the household in March 2009, and shall remain suspended so long as Mr. K. remains a member of the household;
3. All other provisions of CSSD's July 28, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 27th day of September, 2010.

By: Signed _____
Kay L. Howard
Administrative Law Judge

¹¹ See Exh. 3 at pg. 6.

¹² Civil Rule 90.3(c)(1)(B).

¹³ *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

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 19th 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.]