

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

IN THE MATTER OF:)

W. F. P. III)

) OAH No. 10-0432-CSS

) CSSD No. 001157714

DECISION AND ORDER

I. Introduction

The obligor, W. F. P. III, appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 30, 2010. The obligee child is R., 1½ years old. The custodian is C. M. S.

The formal hearing was held on September 22, 2010. Mr. P. participated in person; Ms. S. appeared by telephone. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. P.'s child support is set at \$1,193 per month, effective October 1, 2009, the first of the month following service on him of the notice of paternity and financial responsibility.

II. Facts

R., the child in this case, was born in early March 2009. Almost immediately thereafter, on March 17, 2009, Mr. P. applied for paternity establishment with CSSD by filing a form entitled "Noncustodian's Application for Child Support Services."¹ Only the box listing paternity establishment was checked on his application; none of the other boxes listing various child support services were checked. Before CSSD took any significant action on his application, Mr. P. voluntarily withdrew his request and CSSD closed its case.²

A few months later, on July 9, 2009, Ms. S. contacted CSSD to inquire whether the case was still closed and the caseworker confirmed it was. Ms. S. asked what she should do to reopen it and was informed she could apply for services.³ Later that same day, Mr. P. filed another request for child support services by facsimile.⁴ As with the March application, Mr. P. requested only paternity establishment. In a handwritten note attached to the form and apparently

¹ Exh. 1.

² Exhs. 2 & 3. *See also* Exh. 22 at pgs. 1-2.

³ Exh. 22 at pg. 3.

addressed to a CSSD caseworker, Mr. P. wrote “Here is my application for a paternity test”⁵ Based on this application, CSSD issued a Notice of Paternity and Financial Responsibility on July 29, 2009, which was not served on Mr. P. until September 26, 2009, due to his work rotation.⁶ He requested genetic testing and provided financial information.⁷ Subsequent DNA test results indicate Mr. P.’s probability of paternity of R. is 99.99%.⁸ CSSD issued an Order Establishing Paternity that determined Mr. P. is R.’s father on November 10, 2009.⁹ He later inquired about the birth certificate and paid the cost of paternity testing on December 7, 2009.¹⁰

On January 5, 2010, Ms. S. contacted CSSD to inquire about the status of the case. The caseworker told her it was still “in the process” and the next step would be to establish the child support amount.¹¹ Ms. S. called CSSD again on February 1, 2010. The “establishment process” was explained to her and she asked for and was given her caseworker’s contact information.¹² She then called the caseworker, who told her it would probably be two or more months before a child support order was completed.¹³

No other significant action was taken by CSSD until April 2, 2010, when the agency issued a notice of its intent to close Mr. P.’s case. The notice states in part:

Mr. P. applied for genetic testing for R. with child support services 07/09/09. Genetic testing is complete and no other application for child support services has been received. Therefore this case will close.

If you agree that your case should be closed, you do not need to respond to this notice. Your case will automatically be closed within 60 days from the date of this notice. . .^[14]

For reasons not explained in the record, a CSSD staff member contacted Ms. S. by telephone on April 8, 2010, to inform her that if she wanted CSSD to establish a child support

4 Exh. 4.
5 Exh. 4 at pg. 3.
6 Exh. 7.
7 Exhs. 8 & 9.
8 Exh. 10.
9 Exh. 11.
10 Exh. 22 at pg. 6.
11 *Id.*
12 *Id.*
13 Exh. 22 at pg. 7.
14 Exh. 12.

order, she would have to submit an application for services to the agency.¹⁵ Later that same day, the caseworker generated an Administrative Child Support and Medical Support Order, which was dated April 9, 2010, and sent to the parties. Mr. P.'s copy was served on him on May 13, 2010.¹⁶ The next day he contacted CSSD to ask why the order was initiated and was told it was because of an email he had previously sent to the agency stating he would pay support if the paternity test results were positive.¹⁷ He responded that he would pay support but did not want CSSD involved.¹⁸ Ms. S. spoke with CSSD on May 17, 2010. She stated she and Mr. P. might try to work things out between them without CSSD's services.¹⁹

Mr. P. requested an administrative review on May 20, 2010.²⁰ Both parties were still speaking with CSSD regularly about the case but by the end of May, it appears in her conversations with the agency Ms. S. consistently resisted case closure.²¹ CSSD conducted an administrative review then issued an Amended Administrative Child Support and Medical Support Order on June 30, 2010, that set Mr. P.'s ongoing child support at \$1,193 per month, effective July 1, 2010, with arrears of \$14,316 for the period from July 2009 through June 2010.²² The arrears prior to July 2010 were suspended by CSSD for the reason that Mr. P. had filed the initial application and withdrawn from services.²³

Mr. P. filed an appeal on July 12, 2010, asserting he should not owe support because neither parent had requested child support services.²⁴ On August 8, 2010, Ms. S. submitted an application for child support services.²⁵ After a brief delay caused by Mr. P.'s work schedule, the formal hearing was held on September 22, 2010.

Mr. P. has made support payments on R.'s behalf. He is entitled to a credit for any payments made directly to Ms. S. and not through CSSD.

III. Discussion

Mr. P. applied for a paternity determination by CSSD, after which he withdrew from the

¹⁵ Pre-Hearing Brief at pg. 1.

¹⁶ Exh. 13.

¹⁷ Exh. 22 at pg. 9.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Exh. 14.

²¹ Exh. 22 at pg. 10.

²² Exh. 16.

²³ Exh. 16 at pg. 8.

²⁴ Exh. 17.

agency's services. Ms. S. did not apply for child support until much later. CSSD established a child support order for Mr. P., but it was effective as of July 1, 2010, the first day of the month following issuance of the order. CSSD indicated at the hearing that the order should be effective as of the date Ms. S. applied for services. The obligor appealed because he was confused by CSSD's order, but it is actually the custodian who seeks to require CSSD to establish Mr. P.'s child support obligation as of March 2009, the month in which the child was born.

A child support case before CSSD may arise in any number of ways. One of them is when a putative father applies to CSSD for a determination of paternity of a child.²⁶ If he submits a written application, CSSD will serve the necessary individuals, including the putative father, the child's mother or legal guardian, as appropriate, with a notice of paternity and financial responsibility.²⁷ If the putative father admits paternity, CSSD will issue an order establishing paternity.²⁸ If he denies paternity, he, the child's mother and the child must submit to genetic testing.²⁹ If the tests are positive, the agency will issue an administrative review decision that finds that the putative father is the child's father.³⁰

Upon issuing an order establishing paternity as the result of positive genetic tests, CSSD must also "establish the amount of the support obligation under CSSD's regulations 15 AAC 125.010-15 AAC 125.090."³¹ These regulations dictate how the parent's child support obligation is to be calculated in terms of his income earning capacity and ability to pay support. As to when that obligation is effective, the agency's regulations state:

The agency's notice and finding of financial responsibility establishes an ongoing support obligation owed by the noncustodial parent. The ongoing support obligation is effective as of the first day of the month following service on the noncustodial parent of the notice and finding of financial responsibility, a notice of paternity and financial responsibility, or a paternity complaint, whichever is the earliest.³²

There is no provision in CSSD's regulations that allows a putative father to withdraw from services after paternity has been established. The agency must proceed with establishment

25 Exh. 18.

26 AS 25.27.165(a); 15 AAC 125.216(a).

27 AS 25.27.165(b); 15 AAC 125.217(a).

28 AS 25.27.165(c); 15 AAC 125.217(c) 15 AAC 125.222(b).

29 AS 25.27.165(c); 15 AAC 125.217(d).

30 15 AAC 125.222(b).

31 15 AAC 125.226(f).

of an ongoing child support obligation which, according to 15 AAC 125.100(c), is effective as of the first of the month following service on the putative father of the notice of paternity and financial responsibility.

At the same time, or at any time after CSSD establishes an ongoing child support obligation, the agency may establish the obligor parent's support obligation for time periods prior to the effective date of the ongoing support amount. The regulations allow CSSD to collect these "pre-order arrears," as they are called, only if Medicaid, public assistance or other public services have been expended on the child's behalf – in that instance, from the date benefits were initiated, up to six years prior to service of notice on the obligor – or from the date the custodial parent requested child support services.³³ There is no provision in the regulations for CSSD to establish "pre-order arrears" in the event the applicant for services is the putative father who has requested a paternity determination.

Applying 15 AAC 125.100(c) to this case, the agency was correct in issuing a child support order for Mr. P., but the ongoing support amount should have been effective as of October 1, 2009, the first of the month following service on him of the notice of paternity and financial responsibility.

Both CSSD and Mr. P. advocate for a child support obligation effective as of August 2010, which reflects Ms. S.'s August 8, 2010, application for child support services. But their position is not consistent with 15 AAC 125.100(c) and is superseded by it. Ms. S. believes Mr. P.'s support obligation should be set as of R.'s date of birth. She is correct that the obligor's child support obligation begins with R.'s birth, but not in CSSD actions. In administrative proceedings before the agency, CSSD's regulations control.

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's order set Mr. P.'s 2009 child support at \$1,193 per month, based on his actual 2009 income.³⁴ Because of the time of year, his actual 2010 income is as yet unknown. The 2009 amount is correct as calculated and should apply to both 2009 and 2010.

IV. Conclusion

Mr. P. applied for a paternity determination of the child R. During that process, he was

³² 15 AAC 125.100(c) (emphasis added).

³³ 15 AAC 125.105(a)(1)-(2).

³⁴ Exh. 16 at pg. 6.

served with a notice of paternity and financial responsibility on September 26, 2009. Pursuant to CSSD's regulation 15 AAC 125.100(c), his ongoing support obligation is effective as of the first of the next month, October 1, 2009. His child support amount is correctly calculated at \$1,193 per month, and should be adopted.

V. Child Support Order

- Mr. P. is liable for child support for R. in the amount of \$1,193 per month, effective October 1, 2009;
- Mr. P. is entitled to a credit for direct child support payments made to Ms. S. after that date that can be established by documentation;
- All other provisions of CSSD's June 30, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 31st day of December, 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 26th day of January, 2011.

By: Signed _____
Signature
Jerry Burnett _____
Name
Deputy Commissioner _____
Title

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