

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

IN THE MATTER OF)	OAH No. 10-0490-CSS
B. S. D.)	CSSD No. 001163331
_____)	

DECISION AND ORDER

I. Introduction

A formal hearing was held on October 21, 2010 to consider the child support obligation of B. S. D. (Obligor) for the support of her children, X. and Y. Ms. D. appeared by telephone. The children's maternal grandmother V. S. G., who was the custodian of record for the time periods covered by this order, did not participate.¹ Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (CSSD). The hearing was audio-recorded. The record closed at the end of the hearing.²

This case is Ms. D.'s appeal of CSSD's establishment of an administrative child support order for X. and Y. Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that CSSD's child support order should be affirmed because Ms. D. did not present credible evidence that she was living with her children during any of the months that she was charged child support under the order.

II. Facts

Ms. G. requested the public assistance for X. and Y. beginning in January of 2009. Ms. G. is the children's maternal grandmother.³

CSSD issued an Administrative Child and Medical Support Order on June 1, 2010.⁴ Ms. D. requested an administrative review.⁵ CSSD issued an Amended Administrative Child and Medical Support Order on August 19, 2010. This order set Ms. D.'s ongoing child support obligation at \$344 per month based on imputed full-time year-round minimum wage earnings, plus a PFD. The order also established arrears based on Ms. D.'s reported income going back to

¹ Ms. G. did not appear or provide a phone number as directed by the notice sent to her addresses of record for the hearing. The ALJ was unable to contact her at her phone number of record for hearing.

² The hearing was held under Alaska Statute 25.27.170.

³ Recording of Hearing & Exhibits 4.

⁴ Exhibit 1.

January, 2009. These arrears totaled \$1,332.⁶ CSSD stopped collecting ongoing child support beginning with the month of July 2010, because CSSD determined that the children began living with Ms. D. again during that month.⁷

Ms. D. requested a formal hearing.⁸

At the hearing, Ms. D. first argued that she should not be charged any child support because she never lost legal custody of her children. Ms. D. claimed that she had custody of her children during all of the months covered by the order. Ms. D. also testified that she lived with her children and Ms. G. for several of the months covered by this order.⁹

Ms. D.'s testimony was not credible. Ms. D.'s testimony was contradicted by the evidence of records showing that Ms. G. had claimed and received public assistance for the children during all of the months covered by the order and that Ms. D. was not listed as a member of the household during these months. Ms. D. was originally very evasive in answering questions about where she was living during the specific months in dispute. Ms. D.'s testimony sometimes contradicted testimony she gave earlier in the hearing. Ms. D. testified that she had provided false information on her food stamp applications during the months at issue.¹⁰

Based on the evidence, in the record, I find that it is more likely than not that Ms. D. was not living in the same household as her children during the months of January 2009 through June of 2010.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Ms. D. has the burden of proving by a preponderance of the evidence that CSSD's order is incorrect.¹¹ Ms. D. did not contest the income or calculations CSSD used to set her child support. Ms. D. failed to meet her burden of proof to show that she was a custodial parent during the months at issue, January 2009 through June of 2010.

Ms. D. is liable for child support during these months because she was not living with her children and her mother. Ms. G. was receiving public assistance for their support during these

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ Exhibit 4 & Recording of Hearing.

⁸ Exhibit 5.

⁹ Recording of Hearing.

¹⁰ Recording of Hearing.

¹¹ Alaska Regulation 15 AAC 05.030(h).

months. A voluntary placement does not relieve a parent of her duty to support her children or to reimburse the state for public assistance paid for her children's support when they are in the care of another adult, living in a separate household.¹² Because Ms. D. failed to meet her burden to show that CSSD's order was incorrect, that order will not be changed as a result of her appeal.

IV. Child Support Order

CSSD's Amended Administrative Child and Medical Support Order issued on August 19, 2010 is affirmed.

DATED this 8th day of November, 2010.

By: Signed
Mark T. Handley
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 30th day of November, 2010

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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

¹² Alaska Statute 25.27.120(a).