

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

IN THE MATTER OF:)	
)	OAH No. 11-0006-CSS
K. A. M.)	CSSD No. 001164191
_____)	

DECISION AND ORDER

I. Introduction

This case involves the obligor K. A. M.'s appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on December 2, 2010. Ms. M. has three children, but the oldest, R., is 19 and has emancipated and A., 17, is being added to the order in a separate modification action. The youngest child, H., 14, is the only child for whom child support currently is being collected by CSSD. The other party is L. G. N., paternal grandmother.

The formal hearing was held on February 3, 2011. Ms. M. did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child and Medical Support Order is affirmed, with slight adjustments to the child support amounts, and ongoing support is suspended as of December 1, 2010. H. is currently in the custody of his paternal aunt and uncle, court-appointed guardians, but they have not requested child support services, neither do they receive public assistance on his behalf.

II. Facts

A. Procedural History

L. G. N., H.'s paternal grandmother, began receiving public assistance benefits on his behalf in September 2009.² CSSD issued an Administrative Child Support and Medical Support Order on August 2, 2010, which was served on Ms. M. on October 2, 2010.³ Ms. M. requested an administrative review and provided some income information.⁴ On December 2, 2010, CSSD issued an Amended Administrative Child and Medical Support Order that set Ms. M.'s child

¹ Telephone calls were placed to the two contact numbers Ms. M. provided on her appeal form so she could participate in the hearing. Neither call was answered but voicemail messages were left at both numbers. Ms. M. has not contacted the Office of Administrative Hearings in response to the voicemail messages.

² Exh. 3 at pg. 9.

³ Exh. 1 at pgs. 1 & 12.

support arrears at \$732 through December 2010, with ongoing as of January 2011 set at \$262 per month, based on earnings projected from the minimum wage.⁵ Ms. M. appealed on January 5, 2011, asserting she has not worked since 2008, her unemployment benefits have since run out and she is subsisting on only the PFD and her Native corporation dividends.⁶

On January 6, 2011, the OAH sent Ms. M. a notice of the date and time for the hearing by certified mail to her last-known address. She received and signed for it on January 7, 2011. Before the hearing on February 3, 2011, two unsuccessful attempts were made to reach Ms. M. for the hearing. Because she received and signed for the notice of hearing, service of the notice on her was found to be effective and the hearing was conducted without her participation.⁷

At the hearing, Ms. N. testified that H. lived with her from the summer of 2008 through November 2010. She applied for and began receiving public assistance benefits on his behalf in September 2009. He has since gone to live with Ms. N.'s daughter, C. G., who is H.'s aunt and his court-appointed guardian. Ms. N. added that C. and her husband have had custody of Ms. M.'s children on and off since 2003. CSSD stated that the G.s have not applied for public assistance or child support services, so Ms. M.'s ongoing support obligation should be suspended as of December 2010.

Ms. N. further testified that the middle child, A., just turned 17 and is currently living with her and attending the 11th grade. According to CSSD, A. is being added to Ms. M.'s child support case via a separate modification proceeding.

B. Findings of Fact

1. The obligee H. lived with Ms. N. and received public assistance benefits while in her custody from September 2009 through November 2010, at which time he went to live with his aunt, C. G., who has not applied for child support services;⁸

2. Ms. M.'s middle child, A., 17, currently lives with Ms. N. and is being added to Ms. M.'s child support order through a separate modification proceeding;

3. Notice of the date and time for the hearing was sent by certified mail to Ms. M. and she signed for it on January 7, 2011;

4. Ms. M. did not appear for the hearing, nor has she contacted the OAH;

⁴ Exh. 2.

⁵ Exh. 3.

⁶ Exh. 5.

⁷ See 15 AAC 05.010(c).

⁸ Exh. 5.

5. Ms. M. is not employed and her income primarily consists of the PFD, unemployment benefits and her Native corporation dividends – in 2009 her total income was \$5,592,⁹ and in 2010 her total income \$3,436;¹⁰

6. CSSD correctly calculated Ms. M.'s child support at \$93 per month from September 2009 through December 2009, and \$57 per month from January 2010 through November 2010;¹¹

7. Ms. M.'s ongoing child support will be determined in the modification action that is currently being processed by CSSD so as to add the child A. to her order.

III. Discussion

Ms. M. filed an appeal and requested a formal hearing, but she did not participate in the hearing. The only evidence she presented was her appeal statement. 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. The person who filed the appeal, in this case, Ms. M., has the burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.¹²

A parent is obligated both by statute and at common law to support his or her children.¹³ This obligation begins when the child is born.¹⁴ By regulation, 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 child(ren), up to six years prior to service on the obligor of notice of his or her support obligation.¹⁵ Ms. N. began receiving public assistance on H.'s behalf beginning in September 2009, to that is the date Ms. M.'s obligation to support him through CSSD should begin.¹⁶

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." CSSD determined Ms. M.'s actual income for 2009 and 2010 at \$5,592 and \$3,436, respectively, and using those figures, calculated her support obligation at \$93 per month for 2009 and \$57 per month for 2010. However, as of

⁹ Exhs. 9 & 10.

¹⁰ Exhs. 9 & 10.

¹¹ Exh. 10 at pgs. 1 & 2.

¹² 15 AAC 05.030(h).

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁵ 15 AAC 125.105(a)(1)-(2).

¹⁶ *See* Exh. 10 at pg. 4.

December 2010, H. has gone to live with his aunt and guardian, who has not applied for services or received public assistance on his behalf. As a result, Ms. M.'s child support as of December 1, 2010, should be suspended. Other than her appeal form, Ms. M. has not appeared or provided any evidence in this appeal to contradict CSSD's determination.

IV. Conclusion

Ms. M.'s son H. received public assistance benefits while in the custody of his paternal grandmother, L. G. N. Ms. M. is obligated to reimburse the state for those benefits in an amount to be determined by calculating her child support obligation. CSSD has calculated her obligation at \$93 per month from September 2009 through December 2009, and \$57 per month from January 2010 through November 2010, with ongoing suspended as of December 1, 2010. A. will be added to the order in the future. CSSD's calculations are correct and should be adopted.

V. Child Support Order

- Ms. M. is liable for child support for H. in the amount of \$93 per month from September 2009 through December 2009, and \$57 per month from January 2010 through November 2010;
- Ongoing support is suspended, effective December 1, 2010, and shall remain suspended unless H.'s custodian applies for services or receives public assistance benefits on his behalf;
- All other provisions of the Amended Administrative Child and Medical Support Order dated December 2, 2010, remain in full force and effect.

DATED this 8th day of March, 2011.

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 25th day of March, 2011.

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

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