

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

IN THE MATTER OF:)

J. J. S.)

) OAH No. 11-0027-CSS
) CSSD No. 001164703
)

DECISION AND ORDER

I. Introduction

This case involves the obligor J. J. S.'s appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on January 6, 2011. The child in this case is A., 3 years of age; the other party is L. E. H.

The formal hearing was held on February 7, 2011. Mr. S. did not participate.¹ Ms. H. also was unavailable.² 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. Mr. S.'s child support is set at \$504 for December 2009 and \$783 per month for January 2010 through June 2010. A court order regarding custody and child support took effect as of July 1, 2010.

II. Facts

A. Procedural History

Ms. H. applied for child support services for A. in December 2009.³ CSSD requested income information from Mr. S., which he submitted.⁴ On June 9, 2010, the court issued an interim order for Mr. S. to pay child support for A. as of July 1, 2010.⁵ On August 26, 2010, CSSD issued an Administrative Child Support and Medical Support Order.⁶ Mr. S. requested

¹ Telephone calls were placed to the two contact numbers on record for Mr. S. The first number appears to be his personal telephone, but a message could not be left for him because the voicemail box was full. The second number was for Mr. S.'s work, but he was not there to take the call.

² Two telephone numbers were provided for Ms. H. in the pre-hearing paperwork, but at the time of the hearing neither one was a working number.

³ Exh. 10 at pg. 3.

⁴ Exh. 1.

⁵ Exh. 2.

⁶ Exh. 3.

that CSSD perform an administrative review, which it did. On January 6, 2011, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. S.'s child support at \$504 for December 2009 and \$783 per month from January 2010 through June 2010, ending when the court's interim custody and support order took effect on July 1, 2010.⁷ Mr. S. appealed on January 13, 2011, asserting he had made child support payments directly to Ms. H.⁸

On January 24, 2011, the OAH sent Mr. S. a notice of the date and time for the hearing by certified mail to his last-known address. He received and signed for it on January 26, 2011. Before the hearing on February 7, 2011, two unsuccessful attempts were made to reach Mr. S. for the hearing. Because he received and signed for the notice of hearing, service of the notice on him was found to be effective and the hearing was conducted without his participation.⁹

B. Findings of Fact

1. A notice of the date and time for the hearing was sent by certified mail to Mr. S. and he received and signed for it on January 26, 2011;

2. Mr. S. did not appear for the hearing, nor has he contacted the OAH;

3. Information from the Alaska Department of Labor database indicates that Mr. S. is employed by a local auto dealership. In 2009 his total income was \$45,789.74,¹⁰ and in 2010 his total income was \$96,319.57;¹¹

4. CSSD correctly calculated Mr. S.'s 2009 child support at \$504 per month, based on his actual income for the year – and applied the amount to the month of December 2009, the month Ms. H. applied for services;¹²

5. CSSD correctly calculated Mr. S.'s January 2010 through June 2010 child support at \$783 per month, based on the income he earned and his employers reported to the Alaska Department of Labor from the 4th quarter of 2009 through the 3rd quarter of 2010;¹³

7 Exh. 7.

8 Exh. 8.

9 See 15 AAC 05.010(c).

10 Exh. 9 at pg. 1.

11 *Id.*

12 Exh. 7 at pg. 6.

13 Exh. 7 at pg. 7; Exh. 9 at pg. 1.

6. Mr. S. has made child support payments directly to Ms. H. – the amounts he paid during the time period at issue in this matter were \$200 in December 2009¹⁴ and \$362 in June 2010.¹⁵

7. Mr. S.'s current and ongoing child support obligation has been determined by the Superior Court pursuant to an order issued on June 9, 2010.¹⁶

III. Discussion

Mr. S. filed an appeal and requested a formal hearing, but he did not participate in the hearing. The only evidence he presented was his appeal statement and 2009 income information. 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, Mr. S., has the burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.¹⁷

A parent is obligated both by statute and at common law to support his or her children.¹⁸ This obligation begins when the child is born.¹⁹ 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.²⁰ Ms. H. requested child support services in December 2009, so that is the date Mr. S.'s obligation to support A. through CSSD should begin.²¹ Also, in this case the court issued a child support order set to take effect as of July 1, 2010, so this administrative child support action applies only for the period from December 2009 through June 2010.

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 Mr. S.'s actual income

¹⁴ Exh. 6 at pg. 2.

¹⁵ Exh. 6 at pg. 3. Mr. S. made other payments to Ms. H., but during the time period set by the court, so the administrative law judge does not have the authority to grant him credit for those payments. Mr. S. should request that CSSD grant the credits in its capacity of enforcing child support orders issued by the court.

¹⁶ Exh. 2.

¹⁷ 15 AAC 05.030(h).

¹⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁹ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

²⁰ 15 AAC 125.105(a)(1)-(2).

²¹ See Exh. 10 at pg. 4.

for 2009 and for the four consecutive quarters prior to the calculation for 2010, as stated above, and using those figures calculated his support obligation at \$504 per month for 2009 and \$783 per month for 2010. Mr. S. has not appeared or provided any evidence in this appeal to contradict CSSD's determination.

IV. Conclusion

Mr. S. did not meet his burden of proving that the Amended Administrative Child and Medical Support Order dated January 6, 2011, is incorrect. CSSD's calculations are correct and should be adopted.

V. Child Support Order

- Mr. S. is liable for child support for A. in the amount of \$504 per month for December 2009, and \$783 per month for January 2010 through June 2010;
- Mr. S. is entitled to credit for child support payments he made directly to Ms. H. – \$200 in December 2009 and \$362 in June 2010;
- This administrative child support order applies only to the time period from December 2009 through June 2010 – ongoing child support has been determined by the Alaska Superior Court as of July 1, 2010;
- All other provisions of the Amended Administrative Child and Medical Support Order dated January 6, 2011, remain in full force and effect.

DATED this 11th 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 5th day of April, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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