

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

IN THE MATTER OF:)	
)	OAH No. 11-0046-CSS
A. V. R.)	CSSD No. 001162397
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DECISION AND ORDER

I. Introduction

This case involves the obligor A. V. R.’s appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on January 19, 2011. The obligor child is S., age 4. The custodian of record is P. A. B., the child’s paternal grandmother.

The formal hearing was held on February 24, 2011. Ms. R. did not participate.¹ Ms. B. appeared by telephone. 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.

II. Facts

A. Procedural History

Ms. B., S.’s paternal grandmother, began receiving public assistance benefits on her behalf in June 2009.² CSSD initiated the process of establishing Ms. R.’s child support obligation by requesting financial information from her on October 14, 2009 and issuing an administrative child support order on March 27, 2010.³ After she requested an administrative review, CSSD issued an Amended Administrative Child and Medical Support Order on January 19, 2011, that set Ms. R.’s ongoing child support at \$249 per month, with arrears of \$4,332 from

¹ A telephone call was placed to the contact number Ms. R. provided with her appeal so she could participate in the hearing. The call was not answered but a voicemail message was left at that number. The next day a man identifying himself as Ms. R.’s father called the Office of Administrative Hearings but was referred at his request to CSSD’s representative. Ms. R. has not filed any statement to explain why she did not participate in the hearing or to request a supplemental hearing.

² Exh. 4 at pg. 8.

³ Pre-hearing brief at pg. 1; Exh. 1.

June 2009 through December 2010.⁴ Ms. R. appealed on February 4, 2011, asserting she does not have any income because she has moved to Ohio and is living with her father.⁵

On February 10, 2011, the OAH sent Ms. R. a notice of the date and time for the hearing by certified mail to her last-known address. She received and signed for the notice on February 14, 2011, then called the OAH to provide a telephone number where she could be called for the hearing. However, on February 24, 2011, Ms. R. could not be reached at the number she provided. Because she received and signed for her notice and subsequently contacted the OAH, service was found to be effective and the hearing was conducted without her participation.⁶

At the hearing, Ms. B. testified she has had physical custody of S. since May 2009 and obtained court-ordered custody in June 2009. S. is attending pre-kindergarten day care for three hours per day. Ms. B. is disabled and is not currently working.

In response to questions posed to her by CSSD, Ms. B. stated that Ms. R. moved to Ohio in September 2010 and is currently helping her father restore a restaurant. Ms. B. believes Ms. R. is also attending outpatient treatment and is almost finished with the program.

B. Findings of Fact

1. The obligee S. has lived with Ms. B. since May 2009 and public assistance benefits have been paid on her behalf since June 2009;⁷
2. Notice of the date and time for the hearing was sent by certified mail to Ms. R. and she signed for it on February 14, 2011;
3. Ms. R. did not appear for the hearing, nor has she contacted the OAH;
4. Ms. R. is not currently employed; in 2009 she received \$10,470 from unemployment benefits and the PFD of \$1,305, for total income of \$11,775 – all of which results in a child support amount of \$192 per month for one child;⁸
5. In 2010, Ms. R.'s income was \$7,337 from unemployment benefits for the first half of the year and the PFD of \$1,281, plus income of \$7,696 imputed for the second half of the

⁴ Exh. 4.

⁵ Exh. 5.

⁶ See 15 AAC 05.010(c).

⁷ Exh. 4 at pg. 8.

⁸ Exh. 4 at pg. 6; Exh. 7.

year based on the minimum wage of \$7.40 per hour, for total income of \$16,314 – all of which results in a child support amount of \$249 per month for one child.⁹

III. Discussion

Ms. R. filed an appeal and requested a formal hearing, but she did not participate in the hearing. Otherwise, she provided limited evidence -- her appeal statement, along with some financial information and a letter from her father. 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. R., has the burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.¹⁰

A parent is obligated both by statute and at common law to support his or her children.¹¹ In cases established by CSSD, the agency 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 the date the action was initiated.¹² Ms. B. began receiving public assistance on S.'s behalf beginning in June 2009, so that is the date Ms. R.'s obligation to support her child through CSSD should begin.¹³

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. R.'s actual income for 2009 at \$11,775, which leads to a child support amount of \$192 per month.¹⁴ For 2010, CSSD used Ms. R.'s half-year unemployment benefits and the PFD, to which it added one-half year of imputed earnings based on the Alaska minimum wage.¹⁵

Ms. R. asserts that she is not able to work because she has moved out of state and is living with her father, but there is no information in her statement to explain why she is not working or, if she is looking for work, why her job search has been unsuccessful. Ms. B. stated that Ms. R. is currently helping her father restore a restaurant. If this information is, in fact,

⁹ Exh. 4 at pg. 7; Exh. 7.

¹⁰ 15 AAC 05.030(h).

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² 15 AAC 125.105(a)(1)-(2).

¹³ See Exh. 4 at pg. 8.

¹⁴ Exh. 4 at pg. 6.

¹⁵ Exh. 4 at pg. 7.

correct, it may explain why Ms. R. is not working but it does not explain why that activity should take precedence over supporting S. or searching for employment until she finds a job and is able to support her child. Her duty to support S. takes priority over other debts, obligations and lifestyle decisions.¹⁶

Since she did not appear and provide answers to these questions, Ms. R. did not meet her burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.

IV. Conclusion

Ms. R.'s daughter S. received public assistance benefits while in the custody of her paternal grandmother, P. A. B. Ms. R. 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 \$192 per month from June 2009 through December 2009, and \$249 per month for 2010 and ongoing. CSSD's calculations are correct and should be adopted.

V. Child Support Order

- Ms. R. is liable for child support for S. in the amount of \$192 per month from June 2009 through December 2009, and \$249 per month, effective January 1, 2010, and ongoing;
- All other provisions of the Amended Administrative Child and Medical Support Order dated January 19, 2011, remain in full force and effect.

DATED this 29th day of March, 2011.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁶ See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

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 15th day of April, 2011.

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

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