

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

IN THE MATTER OF:)

H M. G)

OAH No. 11-0138-CSS

CSSD No. 001147916

DECISION AND ORDER

I. Introduction

The obligor, H M. G, appealed an Administrative Review Decision that the Child Support Services Division (CSSD) issued on March 30, 2011. The obligee child is J, who is 19 years of age. The custodian of record is T T. H, J's older sister.

The hearing was held on May 3, 2011. Both Ms. G and Ms. H appeared in person. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. G's child support obligation is suspended as of December 1, 2009, because in the previous month she went to live with her daughters, T and J, and thus became a member of the household.

II. Facts

A. Procedural history

Ms. H began receiving public assistance for her younger sister, J, in October 2006.¹ CSSD requested financial information from the obligor, Ms. G, in June 2007.² There is no evidence that she responded. On January 6, 2011, CSSD issued an Administrative Child Support and Medical Support Order that set Ms. G's ongoing child support at \$255 per month, with arrears totaling \$9,582 for the period from October 2006 through January 2011.³ She requested an administrative review, after which CSSD issued an Administrative Review Decision affirming the January 6th order.⁴ Ms. G appealed on April 4, 2011, asserting that she has been in the home since November 2009.⁵

¹ Exh. 2 at pg. 13.

² Exh. 1.

³ Exh. 2.

⁴ Exhs. 3, 5-8.

⁵ Exh. 9.

B. Material facts

Ms. G testified that she sent the obligee to her daughter, T (the custodian) in Alaska in about June or July 2006. She continued to move around until November 2009, when she came to live with T and J, the child in this case. Earlier, Ms. G had lived with her other daughter L from April 2008 through November 2009. She remembers that time period because her son-in-law returned from a military deployment in November 2009 and it was then that she moved out and moved in with T.⁶

Ms. G also testified that she shares expenses with T and has given her about \$300 per month for rent since she moved into the home. She acknowledged she did not give T any money for child support prior to November 2009.

T is employed at a local bingo establishment. Since T works late into the night, J has been taking online high school classes and hopes to finish within 1½ years. T receives only a moderate income and would not have been able to support J without the financial help she received for her sister from public assistance. Likewise, when Ms. G moved into the home she began giving T \$300 per month for the rent, but T still had to pay all of the other household expenses for the three of them. She could not do this without continued public assistance for J. Because she was still supporting her sister, T believed she was still able to receive public assistance benefits for J and did not appreciate the fact that she would have had to report Ms. G in the home.⁷

III. Discussion

Ms. G has appealed CSSD's establishment of her support obligation for J. As the person who filed the appeal, she has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.⁸

A parent is obligated both by statute and at common law to support his or her children.⁹ The parent is liable to reimburse the state for public assistance benefits.¹⁰ The amount of the

⁶ Her son-in-law submitted an affidavit that stated Ms. G left his and L's home when he returned from being deployed in November 2009. Exh. 7 at pg. 2.

⁷ In response to a request from the ALJ, CSSD contacted DPA to inquire whether benefit recipients have to report other adults in the home. Apparently a DPA caseworker responded "yes" and gave CSSD a citation to a desk manual that sets forth that requirement. Unfortunately the undersigned did not ask CSSD to provide the information in affidavit form, so one was not submitted, nor was the specific language from the manual provided. Also, CSSD stated that T "was informed of the rules at each annual interview," but no specific evidence of that was provided.

⁸ 15 AAC 05.030(h).

reimbursement is amount of the parent's child support obligation. CSSD collects support from the date public assistance was initiated, up to six years prior to the date support was initiated.¹¹

In this case, J began receiving public assistance benefits in October 2006.¹² Ms. G began living with T and J in November 2009, so she is liable for public assistance reimbursement from October 2006 through November 2009. She is not liable for support after November 2009 because that is when she became a member of T's household, and technically assumed the role of custodial parent.

As stated in the findings of fact, it is more likely than not that T, who continued to support J even after their mother moved in, did not fully appreciate or comprehend a requirement that she report Ms. G in the home. T still needed financial assistance for J – she was receiving only minimal support from her mother in the form of a \$300 rent payment. This did little to help with J because T had to continue to pay all of the other expenses of the household. Thus, there is insufficient evidence in the record to support a finding that T purposefully delayed reporting Ms. G in the home in order to continue to receive public assistance benefits for J. Rather, it is more likely than not that T believed she could still receive benefits for J because she still had to support her younger sister and her mother's contribution was minimal. T's testimony was credible.

Ms. G claims she told T to terminate public assistance benefits a year ago, but T denies this. Ms. G further claims she did not know T was receiving public assistance, but unless she is referring to the time period after February 2011, her testimony is inconsistent with her earlier statement that she instructed T to get off the benefit rolls a year ago. In February 2011 Ms. G obtained T's withdrawal from services, but it seems they both misunderstood that the withdrawal pertained only to child support services, not to public assistance benefits.

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions. CSSD's initial calculations had to be re-done because Ms. G's IRS transcripts revealed that she earned some federal wages beginning in 2008 that were not reported to the Alaska Department of Labor and

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ AS 25.27.120(a).

¹¹ 15 AAC 125.105(a)(1)-(2).

¹² Exh. 2 at pg. 13.

Workforce Development.¹³ After the hearing CSSD recalculated Ms. G's child support for 2008 and 2009, so the correct amounts are: \$145 per month for 2006 (October – December); \$239 per month for 2007; \$355 per month for 2008; and \$341 per month for 2009 (January – November).¹⁴ These amounts are correct pursuant to Civil Rule 90.3 and should be adopted. Because her ongoing support obligation for J was suspended effective December 1, 2009, a payment plan for Ms. G will be set up and she will be able to retire the debt over the next few years.¹⁵

IV. Conclusion

Ms. G met her burden of proving by a preponderance of the evidence that the Administrative Review Decision was incorrect. Her child support amounts for 2006-2009 have been correctly calculated and should be adopted. Ms. G is not liable for ongoing child support as of December 1, 2009, because she moved into the home and effectively assumed the role of custodial parent.

V. Child Support Order

- Ms. G is liable for support for J in the amount of \$145 per month for October 2006 through December 2006; \$239 per month for 2007; \$355 per month for 2008; and \$341 per month for January 2009 through November 2009;
- Ongoing support is suspended as of December 1, 2009;
- All other provisions of the Administrative Review Decision dated March 30, 2011, remain in full force and effect.

DATED this 29th day of June, 2011.

By: Signed
Kay L. Howard
Administrative Law Judge

¹³ See Exh. 5.

¹⁴ Exh. 2 at pgs. 7-8; Exh. 11 at pgs. 2-3.

¹⁵ See CSSD's amortization (repayment) chart at regulation 15 AAC 125.545.

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 19th day of July, 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.]