

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

IN THE MATTER OF:)
) OAH No. 11-0186-CSS
 W. M. D.) CSSD No. 001166813
_____)

DECISION AND ORDER

I. Introduction

This case involves W. M. D.’ appeal of an Administrative Review Decision that the Child Support Services Division (CSSD) issued in her case on April 14, 2011. The obligee children are M., 6, and Q., 4. The other parent and custodian of record is S. R. Z.

The formal hearing commenced on June 9th and concluded on June 27th of 2011. Ms. D. appeared at the first session but not the second; Mr. Z. did not participate in either one. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD’s Administrative Review Decision dated April 14, 2011, is affirmed, with one adjustment – Ms. D. is entitled to a credit for direct payments in the amount of \$950 per month for November 2009 through April 2010.

II. Facts

A. Procedural Background

Mr. Z. began receiving public assistance for M. and Q. in November 2009.¹ CSSD requested income information from Ms. D.² On November 15, 2010, CSSD issued an Administrative Child Support and Medical Support Order setting Ms. D.’ ongoing child support at \$705 per month for two children, plus arrears of \$4,512 for the period from November 2009 through April 2010.³ She requested an administrative review.⁴ On April 14, 2011, CSSD issued an Administrative Review Decision affirming its earlier administrative support order.⁵ Ms. D. submitted information on April 26, 2011, and filed an appeal on May 13, 2011, asserting among

¹ Exh. 2 at pg. 9.
² Exh. 1.
³ Exh. 2.
⁴ Exh. 3.
⁵ Exh. 4.

other things that she and Mr. Z. had shared custody of the children and she paid his rent for the period of time at issue.⁶

On May 20, 2011, the Office of Administrative Hearings (OAH) sent the parties a notice of the date and time for the hearing by certified mail. Both Ms. D.' and Mr. Z.' notices were returned unclaimed, but Ms. D. was reached by telephone for the first session of the hearing. She requested that the hearing be rescheduled for both her and Mr. Z.' benefit so that they could both be present. Her request was granted. On June 14, 2011, the OAH sent both parties a notice of the supplemental hearing by first class mail. Neither Ms. D. nor Mr. Z. could be reached for the hearing.

Because Ms. D. was contacted for the initial hearing and verbally requested that the hearing be rescheduled but she later failed to appear, service on her was found to be effective and the hearing was conducted without her participation.⁷

B. Material Facts

1. Ms. D. was contacted for the initial hearing and verbally requested a continuance, which was granted;
2. Notice of the supplemental hearing was sent to Ms. D. by first class mail but she did not appear for the hearing;
3. CSSD correctly calculated Ms. D.' child support at \$846 per month for two children for 2009 and \$705 per month for two children (\$522 for one child) for 2010;⁸
4. Ms. D. paid Mr. Z.' rent from November 2009 through April 2010.⁹

III. Discussion

Ms. D. filed an appeal of a child support order. After being contacted by telephone, she requested a supplemental hearing, which was granted. However, she failed to appear for the hearing. 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.

A parent is obligated both by statute and at common law to support his or her children.¹⁰ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on

⁶ Exh. 7.

⁷ See 15 AAC 05.010(c).

⁸ Exh. 2 at pgs. 7-9.

his or her "total income from all sources." CSSD calculated Ms. D.' child support at \$846 per month for two children for 2009 and \$705 per month for two children (\$522 per month for one child) for 2010. These calculations are correct because they are based on her actual income as reported to the Alaska Department of Labor and Workforce Development.¹¹ These amounts should be adopted.

Ms. D.' primary issue concerns a request for a credit for direct payments she made to Mr. Z. for the rent in the apartment where he and the children lived during the period of time at issue in this case. CSSD may give the obligor credit for direct payments made "before the time the obligor is ordered to make payments through the agency," so long as the direct payment was not made before the first date support is due in the administrative child support action.¹² An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.¹³

In this case, Ms. D. claimed in multiple communications to CSSD that she had paid Mr. Z.' rent while they were separated by a no-contact order.¹⁴ Ms. D.' statements are all consistent and when viewed together her story comes together: Mr. Z. was under house arrest with an ankle monitor, so he couldn't leave, nor could he work. Ms. D. moved out of their apartment and left the children there with him while she stayed with her parents and friends and paid the apartment rent and utilities. When he was released from custody the family was reunited.¹⁵ Most importantly, Mr. Z.' notarized statement confirms her claim on this appeal issue. Ms. D. has therefore met her burden of proof regarding the direct pay credit. Thus, she is entitled to a credit in the amount of \$950 per month for the rent she paid from November 2009 through April 2010.

IV. Conclusion

Ms. D. did not appear and submit any evidence other than her request for an administrative review and her appeal. However, she did meet her burden of proof that she is entitled to a direct credit for paying rent for the apartment occupied by Mr. Z. and M. and Q.

⁹ Exh. 5 at pg. 3.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ Exh. 2 at pgs. 7-8.

¹² AS 25.27.020(b).

¹³ *Id.*

¹⁴ *See* Exh. 3 at pg. 1; Exh. 6.

¹⁵ *Id.*

during the time period at issue in this appeal. The Administrative Review Decision is correct in all other respects and should be affirmed, with the one adjustment that she is entitled to the credit.

V. Child Support Order

- CSSD's Administrative Review Decision dated April 14, 2011, is affirmed, with one adjustment:

- Ms. D. is entitled to a direct credit in the amount of \$950 per month for the rent that she paid where Mr. Z. and M. and Q. resided; the credit is to be applied to each month from November 2009 through April 2010;

- Ms. D.' ongoing child support has been suspended because the children are currently living with her. In the event she becomes liable for ongoing child support in the future the amount shall be set at \$705 per month for two children or \$522 per month for one child.

DATED this 27th day of July, 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 30th day of August, 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.]