

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

|   |   |                     |
|---|---|---------------------|
| IN THE MATTER OF:                       | ) |                     |
|   | ) | OAH No. 11-0194-CSS |
| E. M. F.                                | ) | CSSD No. 001170716  |
| <hr style="width:50%; margin-left:0;"/> |   |                     |

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor E. M. F.’s appeal of an Administrative Review Decision that the Child Support Services Division (CSSD) issued in her case on May 11, 2011. The obligee children are A., B., C., D. and G., all of whom range from one year of age up to eight years of age. The other parent and custodian of record is X. K. F.

The formal hearing was held on June 13, 2011. Neither party participated.<sup>1</sup> Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD’s Administrative Review Decision dated May 11, 2011, is affirmed.

**II. Facts**

*A. Procedural Background*

Mr. F. applied for public assistance benefits for the children in July 2010.<sup>2</sup> CSSD requested income information from Ms. F., who provided copies of documents she apparently intended to file in court in a divorce action.<sup>3</sup> On February 23, 2011, CSSD issued an Administrative Child Support and Medical Support Order setting Ms. F.’s ongoing child support at \$507 per month for five children, plus arrears of \$4,071 for the period from July 2010 through March 2011.<sup>4</sup> She requested an administrative review and submitted to the OAH more copies of documents to be filed in court, including affidavits regarding custody of the children.<sup>5</sup>

---

<sup>1</sup> Telephone calls were placed to both Ms. F.’s and Mr. F.’s contact numbers, but neither one was answered. Ms. F.’s voicemail box was full, so it was not possible to leave her a message. There was no answering machine taking calls for Mr. F..

<sup>2</sup> Exh. 2 at pg. 9.

<sup>3</sup> Exh. 1.

<sup>4</sup> Exh. 2.

<sup>5</sup> Exhs. 3-4.

On May 11, 2011, CSSD issued an Administrative Review Decision affirming its earlier administrative support order.<sup>6</sup> Ms. F. filed an appeal on May 18, 2011, asserting she is unemployed and now on bed rest for pregnancy complications, and that Mr. F. “was given” \$3,000 in cash on April 15, 2011, which “he should confirm”.<sup>7</sup>

On May 24, 2011, the Office of Administrative Hearings (OAH) sent the parties a notice of the date and time for the hearing by certified mail. Each party received and signed for their notice of hearing.

Before the hearing was to begin, a telephone call was placed to Ms. F.’s contact number, but it was not answered and her voicemail box was full, so it was not possible to leave her a message. She has not contacted the OAH. Because Ms. F. received and signed for her notice of the hearing, service of the notice on her was found to be effective and the hearing was conducted without her participation.<sup>8</sup>

*B. Material Facts*

1. Notice of the date and time for the hearing was sent by certified mail to Ms. F. at her last-known address, and she received and signed for it on May 26, 2011;
2. Ms. F. did not appear for the hearing, nor has she contacted the OAH;
3. Ms. F. did not meet her burden of proving by a preponderance of the evidence that CSSD’s Administrative Review Decision is incorrect;
4. Ms. F.’s 2010 earnings were \$11,946.36, plus the PFD and unemployment benefits of \$1,330, for total income of \$14,557.36.<sup>9</sup> This income figure yields a child support amount of \$425 per month for five children.<sup>10</sup>

**III. Discussion**

Ms. F. filed an appeal of a child support order and she received the notice of the date and time set for the hearing. 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.

---

<sup>6</sup> Exh. 5.

<sup>7</sup> Exh. 6.

<sup>8</sup> See 15 AAC 05.010(c).

<sup>9</sup> Exh. 2 at pg. 7.

<sup>10</sup> Attachment C.

A parent is obligated both by statute and at common law to support his or her children.<sup>11</sup> 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 calculated Ms. F.'s child support at \$425 per month for 2010 and \$507 per month for 2011.<sup>12</sup> The 2010 calculation appears to be from Ms. F.'s actual income, although there is no evidence of that figure in the record.<sup>13</sup> CSSD calculated the 2011 child support amount based on the minimum wage and Ms. F. submitted paystubs through March 11, 2011 showing year-to-date income of \$3,803.13.<sup>14</sup> Were the PFD added, her income would be fairly consistent with the income figure CSSD used for 2011.<sup>15</sup>

Ms. F.'s primary issues are that she has custody of the children; she is unemployed and on bed rest due to pregnancy complications; and Mr. F. "was given" \$3,000 in October 2010.<sup>16</sup>

Ms. F. has not met her burden of proving these issues by a preponderance of the evidence. She submitted an affidavit from three individuals – S. T., D. Y. and N. Q., all signed on March 23, 2011, that state Ms. F. "currently has her 5 children in her custody and possession."<sup>17</sup> However, the three affidavits do not recite who each affiant is and how each one knows the facts claimed. Also, there is no information in the affidavits stating just when Ms. F. took custody of the children. That information would be necessary to determine when Ms. F.'s ongoing support obligation should be suspended. Finally, Ms. F. filed her appeal on May 18, 2011, nearly two months after the affidavits were signed, asserting she was unemployed and on bed rest.<sup>18</sup> This information thus raised significant questions about whether she would still be capable, while on bed rest, of providing direct care for five young children under these circumstances. Ms. F. did not participate in the hearing, so these questions remain unresolved. Finally, without a receipt or Mr. F.'s agreement, Ms. F. is not entitled to a credit for the \$3,000 mentioned.

---

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

<sup>12</sup> Exh. 2 at pgs. 7-8.

<sup>13</sup> The child support calculation worksheet shows this figure, but the worksheet is not evidence of Ms. F.'s income – it merely shows what income amount CSSD used for the calculation. *See* Exh. 2 at pg. 7.

<sup>14</sup> Exh. 3 at pg. 15.

<sup>15</sup>  $\$3,803.13 \times 4 = \$15,212.52 + \$1,281 \text{ (PFD)} = \$16,493.52$  annual income. CSSD estimated Ms. F.'s earnings at \$16,120, based on the minimum wage, plus the PFD. *See* Exh. 2 at pg. 8.

<sup>16</sup> *See* Exh. 6.

<sup>17</sup> Exh. 4 at pgs. 1-3.

<sup>18</sup> *See* Exh. 6.

Since Ms. F. did not appear and the evidence she submitted did not provide answers to the questions posed above, Ms. F. did not meet her burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.

**IV. Conclusion**

Ms. F. did not meet her burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision was incorrect, as required by 15 AAC 05.030(h). CSSD's order should be affirmed.

**V. Child Support Order**

- CSSD's Administrative Review Decision dated May 11, 2011, is affirmed.

DATED this 11<sup>th</sup> 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 29<sup>th</sup> 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.]