

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

IN THE MATTER OF:)	
)	OAH No. 11-0246-CSS
R M. K)	CSSD No. 001162026
_____)	

DECISION AND ORDER

I. Introduction

The obligor, R M. K, appeals an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on May 18, 2011. The obligee child is C, four years of age. The named custodian and other party to the case is C's paternal grandmother, N C-H.

The formal hearing was held in three sessions, concluding on September 20, 2011. Both parties appeared in all three sessions. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. K is liable for child support for C in the amount of \$390 per month for the period from February 2009 through November 2009, and ongoing. Ongoing child support is suspended as of December 1, 2009, and shall remain suspended so long as Ms. K and C live in the same home.

II. Facts

A. Procedural History

Public assistance benefits were paid on C's behalf from February 2009 through November 2009.¹ CSSD initiated a child support action for C's mother, R M. K, in March 2010.² After obtaining income information and evidence from Ms. K, CSSD issued an Amended Administrative Child and Medical Support Order on May 18, 2011, setting her child support at \$390 per month.³ She filed a timely appeal and the matter was referred to the Office of Administrative Hearings for a hearing and preparation of a proposed decision.

¹ Exh. 9.
² Exh. 1.
³ Exh. 7.

B. Material Facts

Based on the testimony of the parties and their witnesses, and the evidence submitted, the following findings of fact are established by a preponderance of the evidence:

In late 2008, Ms. K, C, and C's father, J M. C, lived for a period of time as an intact family with Ms. C-H. Ms. K obtained employment in September, then she and Mr. C separated sometime in October 2008. He left the residence at that time, but Ms. K and C stayed there until Ms. K leased an apartment on November 6, 2008, for C and herself.⁴

Upon getting the apartment, Ms. K needed child care for C, which was supplied in great measure by Ms. C-H, in addition to friends of Ms. K, in particular, A W. By February 2009, C was staying several nights per week with her grandmother. Ms. K would occasionally stay overnight at Ms. C-H's with C, but many times C was there alone.

In February 2009, Ms. C-H, who receives Adult Public Assistance (APA) due to significant health problems, applied for and began receiving public assistance benefits for C. Ms. C-H informed her caseworker when C began receiving benefits and also when they stopped. Ms. C-H asserted, but there has not been sufficient evidence to establish, that Ms. K knew that C's grandmother had made the application and was receiving benefits on C's behalf.

C was with her grandmother often enough that employees of the apartment complex came to believe that C lived with Ms. C-H. At first, Ms. C-H told the apartment manager, Y Z, that she was just babysitting C, but eventually she told Ms. Z that her granddaughter lived in the apartment with her.⁵ In addition, the driver of Ms. C-H's transit van, S H. V, believed C lived with her grandmother.⁶ Ms. V stated that at times when Ms. C-H had a ride scheduled on Ms. V's van, the driver had to awaken Ms. C-H because she had overslept, and that C was also sleeping in the apartment. Ms. C-H's neighbor, M F, who lived at the apartment complex for five years, also observed her neighbor and granddaughter together numerous times and considered C to be living with Ms. C-H.

In October 2009, Ms. K and C moved in with A W and her husband, and lived in their basement. A babysat C and provided transportation for Ms. K, and in exchange, Ms. K would

⁴ Exh. F.

⁵ Testimony of Y Z.

⁶ Statement of S H. V, received August 23, 2011.

contribute to the household food and purchase gas for A's car.⁷ Toward the end of 2009, Ms. K was able to make some payments to A for the child care and transportation assistance.⁸ Public assistance payments to Ms. C-H ended in November 2009.

In 2009, Ms. K received \$26,636 in wages and a PFD in the amount of \$1,305, for total income from all sources of \$27,941.⁹ A child support amount calculated from this income figure is \$390 per month for one child.¹⁰

III. Discussion

A. Location of C from February 2009 – November 2009

The parties to this appeal are R M. K and N C-H, C's paternal grandmother. Ms. C-H received public assistance benefits for C from February 2009 through November 2009. The issue central to this appeal is whether C was actually living with her grandmother during this time frame, or if Ms. C-H was simply one of C's babysitters, as asserted by Ms. K.

As the person who filed the appeal, Ms. K has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect.¹¹

A parent is obligated both by statute and at common law to support his or her children.¹² In cases established by CSSD, the agency collects support from the date the custodian of record requested child support services, or the date public assistance or foster care payments were initiated on behalf of the child.¹³

Public assistance benefits were paid to Ms. C-H on C's behalf from February 2009 through November 2009, so that is the period of time for which CSSD has charged Ms. K with support. CSSD acknowledges the child has been in Ms. K's custody since then. As a result, the agency will not be charging support for any time after November 2009 unless public benefits are again paid on C's behalf while she is in the custody of someone other than her mother.

⁷ Exh. E, letter from A W.

⁸ Exh. A, receipts signed by A W.

⁹ See Exh. 7 at pg. 8. The bottom of CSSD's worksheet indicates the division obtained these figures from the "DOL," which is a shorthand reference to the Alaska Department of Labor and Workforce Development. Ms. K did not contest these figures.

¹⁰ *Id.*

¹¹ 15 AAC 05.030(h).

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ 15 AAC 125.105(a)(1)-(2).

Ms. K has not met her burden of proving by a preponderance of the evidence that she is not liable for C's support during the months in question. Ms. K claims that C was with her grandmother at most about 3 overnights per week. However, testimony from Ms. C-H's neighbor and the manager of the apartment complex in 2009, in addition to a statement by the driver of Ms. C-H's transit van, establish that at some point, C was living with her grandmother essentially on a full-time basis. This evidence is also supported by Ms. C-H's contemporaneous report to her APA caseworker that C was living with her.¹⁴

In addition to Ms. K's, C's father, J M. C, provided testimony on Ms. K's behalf. He appeared to be angry with Ms. C-H. He claimed that Ms. C-H would take care of C for short periods of time, but never enough to warrant receiving any sort of state assistance.¹⁵ Ms. K's other witness was A W, who submitted a written statement essentially to the effect that C did not live with Ms. C-H.

B. Child Support Calculation

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 such as taxes and Social Security. CSSD calculated Ms. K's child support at \$390 per month for the applicable months during 2011.¹⁶ This amount is correct because it is based on Ms. K's actual 2011 income.

IV. Conclusion

Ms. K 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). Public assistance benefits were paid to Ms. C-H on C's behalf from February 2009 through November 2009, so Ms. K is liable for support for that period of time. Ongoing child support is suspended and shall remain uncollected as of December 1, 2009, so long as Ms. K and C live in the same home.

¹⁴ Testimony of N C-H during the 7/12/2011 session of the hearing.

¹⁵ It should be noted that Mr. C also had a child support case initiated against him as a result of Ms. C-H receiving benefits on C's behalf, but he did not appeal his order. This may be because the monthly support amount was negligible.

¹⁶ Exh. 7 at pg. 8.

V. Child Support Order

- Ms. K is liable for child support for C in the amount of \$390 per month for the period from February 2009 through November 2009, and ongoing;
- Ongoing child support is suspended as of December 1, 2009, and shall remain suspended so long as Ms. K and C live in the same home;
- All other provisions of the Amended Administrative Child and Medical Support Order dated May 18, 2011, remain in full force and effect.

DATED this 3rd day of May, 2012.

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 21st day of May, 2012.

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

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