

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

IN THE MATTER OF:)	
)	OAH No. 11-0266-CSS
D O. P, JR.)	CSSD No. 001166784
_____)	

DECISION AND ORDER

I. Introduction

The obligor, D O. P, Jr., appeals an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on June 16, 2011. The obligee child is A, five years of age. The custodian during the relevant time periods is paternal grandfather, D E. P.

The formal hearing was held on July 25, 2011. Both Mr. P and his father appeared in person for the hearing. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. P is not liable for support in this administrative action until May 2010 because he lived in the home with A through April 2010. Mr. P's child support is set at \$467 per month from May 2010 through November 2010; and \$286 per month for February 2011 through April 2011, and ongoing. Ongoing child support is suspended as of May 1, 2011, because Mr. P and A have been living together in his parents' home since then. In the event Mr. P becomes liable for ongoing support again in the future, CSSD may begin charging him \$286 per month immediately, subject to future modification.

II. Facts

A. Procedural History

Public assistance began to be paid on A's behalf in July 2009.¹ CSSD issued the initial administrative child support order on November 10, 2010, but it was not served on Mr. P until February 8, 2011.² He requested an administrative review and provided additional documentation.³ On June 16, 2011, CSSD issued an Administrative Review Decision that

¹ Exh. 1 at pg. 9.
² Exh. 1 at pg. 14.
³ Exhs. 2 & 5.

affirmed its earlier administrative order.⁴ Mr. P appealed on July 1, 2011.⁵ Prior to the hearing, CSSD submitted Mr. P's up-to-date earnings data from the Alaska Department of Labor from 2008 through the first quarter of 2011.⁶

B. Material Facts

Based on the record as a whole, the material facts are established by a preponderance of the evidence based on the testimony of the parties and the documents submitted into evidence.

Mr. P and K H are the parents of A, born in 2006. They lived together in an apartment until about mid-2008, at which time they moved into the home of Mr. P's parents. K moved out for a short period of time in mid-2009, but returned a few months later and stayed until the beginning of February 2010. She and Mr. P have not been together since then.

Mr. P lived in his parents' home with A from July 2009 through April 2010. In May 2010, he moved into his own apartment but A remained with her grandparents. Mr. P got a DUI in November 2010 and was in jail for most of that month. When he was released he moved back in with his parents. In early February 2011, he got arrested for a third DUI and was in jail through April 2011. When he was released, he once again returned to live with his parents and A.

In summary, since A began on public assistance benefits in July 2009, Mr. P has lived away from her for only two short periods of time, from May 2010 through November 2010, and from February 2011 through April 2011.

Mr. P was previously employed by the No Name business, where he had worked for several years. After he got his second DUI in November 2010, he lost his job but was working with the Alcohol Safety Action Program (ASAP) in an effort to get it back. However, when he got his third DUI in February 2011 and was remanded to jail, Mr. P failed to complete the ASAP program and could not be reemployed. He is currently looking for work and has posted his resume online, but he acknowledged he could be more proactive about searching for employment. Mr. P has a high school diploma and has completed one semester of college.

In 2010, Mr. P earned \$46,300.51 in wages.⁷ He made retirement contributions of \$8,447.06,⁸ and paid union dues of \$720.50.⁹ These income

⁴ Exh. 6.

⁵ Exh. 7.

⁶ Exh. 8.

and deductions, when used in CSSD's online child support calculator, yield a support amount of \$467 per month for 2010.¹⁰

Mr. P worked for No Name business during the first quarter of 2011 and earned \$7,392.18.¹¹ After losing his job, he began receiving unemployment insurance benefits (UIB), which totaled \$4,037.60 by mid-July of this year.¹² CSSD estimated that he had \$7,164.33 in UIB remaining available to him.¹³ Adding his wages for early 2011, plus the UIB he had already received and the UIB remaining, Mr. P's total income for 2011 is estimated at \$18,594.11 if he does not return to employment before the end of the year. This total, when used in CSSD's child support calculator, yields a child support amount of \$286 per month for 2011.¹⁴

III. Discussion

As the person who filed the appeal, Mr. P has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.¹⁵

A parent is obligated both by statute and at common law to support his or her children.¹⁶ 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 a maximum of six years prior to the date the action was initiated.¹⁷

Public assistance benefits first began to be paid for A in July 2009, so that is the first month for which CSSD has charged Mr. P with support. However, Mr. P lived in the home with A from July 2009 through April 2010, so he is not liable for paying support through CSSD until May 2010, when he went to live in his own apartment. He was back at his parents' home with A in December 2010 and January 2011, so he is not liable for those two months. He is liable for February 2011 through April 2011, when he was serving his jail sentence for his third DUI. After moving back to his parents' at the end of April, Mr. P has remained there. He is thus not

7 Exh. 8.
8 Obligor's Exh. A at pg. 3, received on August 10, 2011. The monthly amount is \$703.92 ($\$8,447.06 \div 12$).
9 Exh. A at pg. 2. The monthly amount is \$60.04 ($\$720.50 \div 12$).
10 Attachment A.
11 Exh. 8.
12 CSSD's Submission to Record at pg. 2, received August 11, 2011.
13 *Id.*
14 Attachment B.
15 15 AAC 05.030(h).
16 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.
17 15 AAC 125.105(a)(1)-(2).

liable for paying ongoing support through CSSD as of May 2011, and so long as he remains in the home with A, will not have to pay ongoing support.

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." Mr. P's child support obligation was calculated from the wages his employer reported to the Alaska Department of Labor and Workforce Development, and his UIB benefits in 2011. Mr. P's child support is now correctly calculated at \$467 per month for various months in 2010, and \$286 per month for 2011.

One final note should be made about that portion of CSSD's Administrative Review Decision that discussed his appealing the period of time he was charged with support. The order stated in part:

You requested an administrative review regarding the order that was issued on November 10, 2010 stating the amount of child support determined by CSSD is wrong because you were in the home and your financial circumstances are not as CSSD determined. ... No Name Tribal Council records show the child was on the Native Temporary Assistance Program with Ms. H and is now on Tribal TANF with Mr. P Sr. You will need to contact No Name Tribal Council to seek relief regarding the assistance paid on behalf of your child to Ms. H and Mr. P Sr. while you were in the home. ...^[18]

CSSD's order gives the impression that there is nothing Mr. P can do about being obligated to pay support for A while she was on public assistance with Ms. H. Yet as the evidence was developed in this case, it turns out that Mr. P was also in the home up to April 2010 and as a result he is not liable for support until he moved into his own apartment and A stayed with her grandparents. CSSD's direction to Mr. P to seek "relief" from the No Name Tribal Council (NNTC) is potentially misleading as he is clearly entitled to appeal "whether a duty of support exists" in his case.¹⁹ An obligor parent who contests an administrative child support order issued by CSSD on the basis of being in the home with the child is entitled to raise that issue in a formal hearing and should not be dissuaded from filing an appeal by being referred to the NNTC "for relief".²⁰

18 Exh. 6 at pg. 1.

19 See AS 25.27.180(a).

20 See *State, Dept. of Revenue v. Merriouns*, 894 P.2d 623, 628 n.3 (Alaska 1995).

IV. Conclusion

Mr. P met his 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). Mr. P is not liable for support in this administrative action until May 2010 because he lived in the home with A through April 2010. Mr. P's child support is set at \$467 per month from May 2010 through November 2010; and \$286 per month for February 2011 through April 2011, and ongoing. Ongoing child support is suspended as of May 1, 2011, because Mr. P and A have been living together in his parents' home since then. In the event Mr. P becomes liable for ongoing support again in the future, CSSD may begin charging him \$286 per month immediately, subject to future modification.

V. Child Support Order

- Mr. P is not liable for support in this action from July 2009 through April 2010, or from December 2010 through January 2011;
- Mr. P is liable for child support for A in the amount of \$467 per month from May 2010 through November 2010; and \$286 per month for February 2011 through April 2011, and ongoing;
- Ongoing child support is suspended as of May 1, 2011, and shall remain suspended so long as Mr. P and A live in the same home.
- All other provisions of CSSD's Administrative Review Decision dated June 16, 2011, remain in full force and effect.

DATED this 19th day of September, 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 12th day of October, 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.]