

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

IN THE MATTER OF:	)	
	)	OAH No. 11-0299-CSS
M J. A	)	CSSD No. 001169620
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, M J. A, appeals an Administrative Review Decision that the Child Support Services Division (CSSD) issued in her case on June 29, 2011. The obligee children are V, 16, and F, 15. The custodian of record is F B, Jr.

The formal hearing was held on August 18, 2011. Ms. A appeared in person for the hearing; Mr. B did not participate.<sup>1</sup> Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. A is not liable for child support for V and F because she sent them to Mr. B's home for a short period of time that amounted to visitation only, not a change of custody.

**II. Facts**

*A. Procedural History*

Mr. B received public assistance for V and F from July 2010 through October 2010.<sup>2</sup> CSSD served an Administrative Child Support and Medical Support Order on Ms. A on April 16, 2011.<sup>3</sup> She requested an administrative review.<sup>4</sup> On June 29, 2011, CSSD issued an Administrative Review Decision that affirmed its earlier administrative order.<sup>5</sup> Ms. A appealed on July 28, 2011 and submitted additional evidence.<sup>6</sup> Prior to the hearing, CSSD submitted Ms.

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<sup>1</sup> A telephone call was placed to Mr. B's contact number, but he was not at home. The gentleman who answered the call agreed to give Mr. B a message to call the OAH, but Mr. B has not contacted the office.

<sup>2</sup> Exh. 1 at pg. 11.

<sup>3</sup> Exh. 1 at pg. 19.

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

<sup>5</sup> Exh. 3.

<sup>6</sup> Exhs. 4 & 5.

A's and Mr. B's up-to-date earnings data from the Alaska Department of Labor from 2008 through the present time.<sup>7</sup>

*B. Material Facts*

Ms. A and Mr. B are the parents of V and F. Mr. B has a child support case for the children and Ms. A testified he owes arrears of about \$2,000; that figure was not verified with CSSD. Ongoing support from Mr. B is not being collected by CSSD because Ms. A has withdrawn from services.

Ms. A is V's and F's custodial parent. They are currently in her custody, as they were prior to mid-2010, when the events central to this appeal occurred. Ms. A testified that at that time, she was having some discipline problems with the children so she decided to send them to Mr. B for a period of time that she estimated would not exceed two months. They both went to his home on July 12, 2010. However, on July 31<sup>st</sup>, F called Ms. A and asked her if he could come home and she agreed and picked him up. F was at Mr. B's approximately 2 ½ weeks.

V remained with Mr. B for 34 days. On August 15<sup>th</sup> she left his home and went to stay with an aunt. V remained there until October 4<sup>th</sup>, when Ms. A picked her up and took her home. Ms. A gave the aunt \$600 cash for V's support while she was staying there and the aunt did not apply for child support services for V.

**III. Discussion**

As the person who filed the appeal, Ms. A has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.<sup>8</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>9</sup> 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.<sup>10</sup> Mr. B received public assistance from July 2010 through October 2010, so those are the months for which CSSD charged Ms. A with V's and F's support.

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<sup>7</sup> Exhs. 6 & 7.

<sup>8</sup> 15 AAC 05.030(h).

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

<sup>10</sup> 15 AAC 125.105(a)(1)-(2).

Under AS 25.27.120(a), an obligor parent is liable for reimbursing the State for public assistance benefits received on behalf of a child for whom the obligor owes a duty of support. This statute is the basis of CSSD charging Ms. A with support; there is no identifiable definition of “obligor” and “custodian” in the statutes or regulations.

Since Ms. A was the original custodial parent as between herself and Mr. B, CSSD was queried at the hearing about how it determined that she had become the *obligor* parent. CSSD stated that as a general rule, it considers when a child goes to stay with a noncustodial parent and remains in excess of 27 days, that a change in custody has occurred “if there is no intent for the child to return” on the part of the originating custodian. Pursuant to this policy, CSSD indicated it would not be charging Ms. A with support for F because he was at Mr. B’s for only 2 ½ weeks, much less than the 27-day guideline it uses. Conversely, CSSD requested that Ms. A be charged with support for V for July and August 2010 because she was in Mr. B’s home a total of 34 days within those two months and he received public assistance benefits on her behalf.

Ms. A was the custodial parent of V and F before they went to stay with Mr. B in July 2010. Applying CSSD’s general rule, there was no change in custody from Ms. A to Mr. B in this case during the time period at issue. Ms. A assumed when she sent the children to Mr. B’s that they would not be there for more than two months because they would not be able to get along with him. Therefore, her expectation that V and F would not remain with Mr. B any longer than two months establishes that she had the intent for them to return. Indeed, F came back only 2 ½ weeks later and V stayed with Mr. B only 34 days. Moreover, Ms. A continued to make custodial decisions about the children the entire time – she not only allowed them to go stay with him, but she also is the parent who decided that they would return, and when.

Therefore, Ms. A remained the custodial parent during the period of time in mid-2010 when V and F went to stay with Mr. B. There was no change of custody so Ms. A did not become the obligor parent and is thus not liable for support for either child during that time frame.

#### **IV. Conclusion**

Ms. A met 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). She is not liable for support during the time period V and F went to stay with Mr. B beginning in July 2010. CSSD’s Administrative Child Support and Medical Support Order should be vacated.

**V. Child Support Order**

- CSSD’s Administrative Child Support and Medical Support Order dated February 7, 2011, is vacated;
- Ms. A is not liable for support through CSSD for V and F from July 2010 through October 2010.

DATED this 7<sup>th</sup> 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 26<sup>th</sup> day of September, 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.]