

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

IN THE MATTER OF:)

J E. T)

) OAH No. 11-0357-CSS

) CSSD No. 001166928

DECISION AND ORDER

I. Introduction and Background

The Obligor, J E. T, disputes an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on July 11, 2011. This order establishes, effective August 1, 2011, that Mr. T’s monthly child support obligation for two children is to be \$391 per month and arrears in the amount of \$6,647 owing from March 1, 2010 through July 31, 2011. Mr. T contends that he is entitled to a credit for Children Insurance Benefits (CIB) paid by social security for the two Obligee children, Z and C. The Custodian is F T.

There have been several hearings in this matter. It has been challenging to obtain the information necessary to resolve Mr. T’s appeal or to have both parents participate at any one of the several hearings held in this matter. At the last hearing, Ms. T participated by phone. Mr. T did not participate. After the hearing concluded Mr. T contacted the Office of Administrative Hearings and indicated that he would be requesting a supplemental hearing. The record closed on January 5, 2012 without further participation or input from Mr. T.

Mr. T has established by a preponderance of the evidence that the July 11, 2011 Amended Administrative Child Support and Medical Support Order has failed to account for the CIB payments to the children. Accordingly, the July 2011 Amended Administrative Child Support and Medical Support Order should be adjusted to reflect the CIB payments received and Mr. T is entitled to the corresponding credits.

II. Facts

It is undisputed that Mr. T is receiving monthly Social Security Disability benefits and that his two children are eligible for CIB benefits. CIB benefits received by the Obligee children are treated as income to Mr. T with a corresponding child support credit. When this proceeding

commenced it was unknown if Ms. T applied for CIB benefits on behalf of the children. CSSD obtained, from the Social Security Administration, the following CIB payment information, effective January 5, 2012, for each child:¹

- Z:

Received \$11,877 in a lump sum payment to cover previously unpaid benefits from November 2007 through November 2011. CSSD determined that the lump sum payment was based on the following monthly benefit:

January 2010 \$261;

February 2010 – June 2010 \$392;

July 2010 – December 2011 \$196.²

Received \$196 for December 2011 and effective January 2012, \$203 per month and ongoing.

- C:

Has not yet received a lump sum payment to cover previously unpaid benefits from November 2007 through November 2011.

Received \$196 for December 2011 and effective January 2012, \$203 per month and ongoing.

III. Discussion

Z and C receive CIB payments because of Mr. T's social security benefits. CIB payments are first added to Mr. T's income when calculating child support and then credited against Mr. T's monthly support obligation.³ This means that Mr. T's child support obligation is effectively paid by social security.

The children are likely to receive the same CIB payment. However, as of January 5, 2012, only Z had received a lump sum benefit to cover previously unpaid benefits. The record contains no indication why a lump sum payment has not been made for C, nor does the record indicate why a lump sum payment would not be forthcoming. CSSD wrote in its post hearing brief that it would be manifestly unjust to Mr. T if C's CIB payments are included as income, as

¹ Exh. 7.

² Exh. 8.

³ Commentary Alaska Rule of Civil Procedure 90.3 (III)(A); *Pacana v. State*, 941 P.2d 1263 (Alaska 1997).

it is unknown when the lump sum amount will be paid. CSSD calculated Mr. T's monthly child support obligation for two children to be:

March 1, 2010 – June 30, 2010	\$272 with a CIB credit of \$392
July 1, 2010 – December 31, 2011	\$363 with a CIB credit of \$196
January 1, 2012 and ongoing	\$264 with a CIB credit of \$406. ⁴

Implicit in CSSD's calculation is the conclusion that the lump sum CIB payment should be allocated monthly. The undersigned agrees.

In a child support hearing, the person who filed the appeal has the burden of proving by a preponderance of the evidence that CSSD's order is incorrect.⁵ There is no dispute that the July 11, 2011 Amended Administrative Child Support and Medical Support Order was incorrect and should be adjusted. Therefore, Mr. T has met his evidentiary burden. The child support order should be adjusted.

IV. Conclusion

Mr. T's monthly child support obligation for two children should be calculated as proposed at Exhibit 10 to CSSD's post hearing brief:

March 1, 2010 – June 30, 2010	\$272 with a CIB credit of \$392
July 1, 2010 – December 31, 2011	\$363 with a CIB credit of \$196
January 1, 2012 and ongoing	\$264 with a CIB credit of \$406.

V. Child Support Order

1. Mr. T is liable for child support for two children in the amount of \$272 per month for the period from March 1, 2010 through June 30, 2010. Z received \$392 per month in children's insurance benefits (CIB) from March 1, 2010 through June 30, 2010 as a result of Mr. T's social security.

2. Mr. T is liable for child support for two children in the amount of \$363 per month for the period from July 1, 2010 through December 31, 2011. Z received \$196 per month in CIB from July 1, 2010 through December 31, 2010 as a result of Mr. T's social security.

⁴ Exh. 10.

⁵ 15 AAC 05.030(h).

3. Mr. T is liable for child support for two children in the amount of \$264 per month for the period from January 1, 2012 and ongoing. Z and C each received \$203 per month (total amount of \$406) in CIB from January 1, 2012 and ongoing as a result of Mr. T's social security.

4. All other provisions of the July 1, 2011 Amended Administrative Child Support and Medical Support Order remain in effect.

DATED this 23rd day of January, 2012.

By: Signed
Rebecca L. Pauli
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 10th day of February, 2012.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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