

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

IN THE MATTER OF:)

M L)

OAH No. 11-0358-CSS

CSSD No. 001042031

DECISION AND ORDER

I. Introduction

This case involves the obligor M L's appeal of an Amended Modified Administrative Child Support and Medical Support Order that CSSD issued on August 25, 2011. The obligee child is S, 17, although Mr. L has three other children. S's other parent is Z L; she and Mr. L live together with their three other children.

The formal hearing was held on October 3 and November 7, 2011. Mr. L participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. L's child support obligation for S is set as follows: for the period from August 2010 through May 2011, his obligation is \$142 per month, minus \$122 per month for S's CIB benefit, for a total of \$20 per month for which he is directly responsible. For the months of June and July 2011, his obligation is \$173 per month, minus \$164 per month for S's CIB benefit, for a total of \$9 per month for which he is directly responsible. Mr. L's parental rights were terminated on July 12, 2011, so as of August 1, 2011, Mr. L is no longer liable for S's support.

II. Facts

A. Procedural History

Mr. L became liable for a child support order of \$50 per month for his oldest child, C, in 1994.¹ CSSD has not been enforcing that order because Mr. L and his wife, Z, have lived with all of their children. S went into state custody and began receiving publicly funded services in August 2010.² On March 31, 2011, CSSD issued a notice initiating a modification review so as to add S to Mr. L's previous order for C.³ CSSD issued a modification order on May 19, 2011, which Mr. L appealed and resulted in a formal hearing before the undersigned administrative law

¹ Exh. 2.

² Exh. 10 at pg. 15.

³ Exh. 3.

judge.⁴ Mr. L's appeal was remanded to CSSD further proceedings, after which CSSD issued an Amended Modified Administrative Child Support and Medical Support Order.⁵ Mr. L appealed on September 12, 2011.⁶

B. Material Facts

Mr. L and Ms. L have four children; the oldest, C, turned 18 in April 2011 and graduated from high school in May 2011. The next oldest is S, 17, the child at issue in this appeal. She went into state custody in August 2010. Mr. L's parental rights of S were terminated upon his consent in July 2011.⁷ Mr. L and Ms. L have two younger children, X and Y, who remain in the family home.

Mr. L receives Social Security disability payments. As a result of his disability, the children each received Children's Insurance Benefit (CIB) payments in the amount of \$122 per month through June 2011, which was increased to \$164 per month as of July 2011.⁸

Mr. L is entitled to a direct credit for the CIB payments for the time periods in question. Using his disability payments and the children's CIB benefits, CSSD calculated his child support at \$141.91 (rounded up to \$142) per month, minus the CIB credit of \$122 per month, for a total amount that he must pay of \$20 per month.⁹ This amount is effective from August 2010 through May 2011, the month C graduated from high school.

For the months of June and July 2011, after C graduated, CSSD used the same process and calculated his support at \$172.80 (rounded up to \$173) per month, minus the CIB credit of \$163.70 (rounded up to \$164) per month, for a total amount that he must pay of \$9 per month.¹⁰

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ CSSD collects support from the date the custodian requested child support services, or the date

⁴ Exh. 7.

⁵ Exh. 10.

⁶ Exh. 11.

⁷ Exh. 12.

⁸ Exh. 14.

⁹ Exh. 15 at pg. 2.

¹⁰ Exh. 15 at pg. 4.

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

public assistance or foster care was initiated on behalf of the child(ren).¹² S was taken into state custody in August 2010, so that is the date Mr. L's obligation to support S through CSSD should begin.¹³

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ Adding other children to a child support order is a material change in circumstances.¹⁵

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." If the obligee child is receiving Children's Insurance Benefits (CIB) as a result of the obligor's disability payments, the obligor is entitled to a direct credit in the amount of the child's CIB.¹⁶

CSSD correctly credited Mr. L's child support for the period of time at issue in this case, as discussed in the facts section. Mr. L has thus met his burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.¹⁷ Based on the record as a whole, Mr. L has met his burden and CSSD's order should be adjusted to reflect the latest calculations of his support obligation.

IV. Conclusion

Mr. L met his burden of proof in this appeal so his child support should be modified as discussed to reflect his Social Security disability benefits and S's CIB payments.

V. Child Support Order

- Mr. L's child support obligation for S is set as follows: for the period from August 2010 through May 2011, his obligation is \$142 per month, minus \$122 per month for S's CIB benefit, for a total of \$20 per month for which he is directly responsible;
- for the months of June and July 2011, his obligation is \$173 per month, minus \$164 per month for S's CIB benefit, for a total of \$9 per month for which he is directly responsible;
- Mr. L's parental rights were terminated on July 12, 2011, so as of August 1, 2011,

¹² 15 AAC 125.105(a)(1)-(2).

¹³ See Exh. 4 at pg. 7.

¹⁴ AS 25.27.190(e).

¹⁵ See 15 AAC 125.321(b)(2)(B).

¹⁶ Civil Rule 90.3, Commentary IIIA.

¹⁷ 15 AAC 05.030(h).

Mr. L is no longer liable for S's support.

- All other provisions of the Amended Modified Administrative Child Support and Medical Support Order dated August 25, 2011, remain in full force and effect.

DATED this 29th day of November, 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 16th day of December, 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.]