

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

IN THE MATTER OF:)
)
 W N-S) OAH No. 11-0417-CSS
) CSSD No. 001166811
_____)

DECISION AND ORDER

I. Introduction

The obligor, W N-S, appeals an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on October 7, 2011. The obligee child is D, nearly two years of age. The custodian of record is H D. E.

The formal hearing was held on November 10, 2011. Mr. N-S appeared in person; Ms. E did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. N-S is liable for support for D in the amount of \$134 per month from February 2010 through December 2010; and \$253 per month from January 2011 through December 2011, and ongoing. His request for credit for direct child support payments made on D's behalf is denied.

II. Facts

A. Procedural History

Ms. E began receiving public assistance on D's behalf in February 2010.² The court issued an order establishing Mr. N-S's paternity of D on March 24, 2011.³ CSSD requested financial information from Mr. N-S, then on June 27, 2011, issued an Administrative Child Support and Medical Support Order that set Mr. N-S's child support at \$134 per month, beginning in February 2010, and \$315 per month as of January 2011.⁴ Mr. N-S requested an

¹ Before the hearing, a telephone call was placed to Ms. E's contact number so she could participate, but it was not answered. A voicemail message was left for her to call the OAH. As of this writing, Ms. E has not contacted the office.

² Pre-Hearing Brief at pg. 1.

³ Exh. 1.

⁴ Exhs. 2-3.

administrative review and filed child support guidelines affidavits.⁵ On October 7, 2011, CSSD issued an Administrative Review Decision that affirmed its earlier administrative child support order.⁶ Mr. N-S appealed on October 19, 2011, asserting that he had been expending funds on D's behalf by purchasing supplies for her and by paying for an attorney and genetic testing.⁷ Prior to the hearing CSSD filed an affidavit with an extract of Mr. N-S's earnings history as reported by the Alaska Department of Labor and Workforce Development.⁸

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 Mr. N-S and the documents submitted into evidence.

In 2010, Mr. N-S earned a total of \$7,348.93 from a part-time job in a restaurant in No Nmae. That income figure, plus the PFD of \$1,281 equals total annual income of \$8,629.93 that Mr. N-S received in 2010.⁹ CSSD calculated his child support amount from his total income at \$134 per month.¹⁰

In 2011, Mr. N-S has had two jobs – the part-time restaurant position, where he earns \$8.30 per hour, and a second job working for a company that provides cleaning services for large retail stores. Mr. N-S worked for the cleaning company for three quarters in 2011. He testified that the company lost all of its contracts in the latter part of the year and everyone who worked there was laid off. At the time of the hearing, Mr. N-S testified that he had been looking for another job because he could not get more work hours at the restaurant. He has not received unemployment benefits. The restaurant currently is his only employment.

Earnings information is available for Mr. N-S for the first three quarters of 2011. He earned \$8,140.60 from the cleaning company during that time.¹¹ He is not expected to earn anything more from that business in 2011 because the company lost its contracts and laid off all of its employees. Also during the first three quarters of 2011, Mr. N-S earned \$5,707.75 from his

⁵ Exhs. 4-5.

⁶ Exh. 6.

⁷ Exh. 7.

⁸ Exh. 8.

⁹ Exh. 3 at pg. 7.

¹⁰ *Id.*

¹¹ *Id.*

part-time job at the restaurant.¹² When this amount is averaged over the three quarters, it equals \$1,902.58 per quarter.¹³ Multiplying the quarterly amount times four results in total annual income of \$7,610.33. This is his estimated income from the restaurant in 2011.

When Mr. N-S's income from each of his two jobs in 2011 is combined, it results in total earnings of \$15,750.93.¹⁴ Adding the 2011 PFD amount of \$1,174 results in Mr. N-S having total annual estimated income of \$16,924.93 in 2011. CSSD's online child support calculator generates a child support amount of \$253 per month for 2011 from these figures.¹⁵

III. Discussion

Mr. N-S filed the appeal and requested the hearing in this matter. Although he did question the calculation of his monthly support amount, his primary issue concerns a credit for direct payments he made to Ms. E for supplies for D and for payments he made in furtherance of obtaining DNA test results that establish his paternity of the child. As the person who filed the appeal, Mr. N-S has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.¹⁶

A. Child Support Calculation

A parent is obligated both by statute and at common law to support his or her children.¹⁷ 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, up to a maximum of six years prior to the date the action was initiated.¹⁸ Ms. E applied for and began receiving public assistance on D's behalf in February 2010, so that is the month in which Mr. N-S's obligation to support D through CSSD should begin.¹⁹

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." As can be seen in the earning figures Mr. N-S's employers reported to the Alaska Department of Labor and Workforce Development, he

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Id.

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$\$5,707.75 \div 3 = \$1,902.58.$

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$\$7,610.33 + \$8,140.60 = \$15,750.93.$

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Attachment A.

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15 AAC 05.030(h).

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

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15 AAC 125.105(a)(1)-(2).

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See Pre-Hearing Brief at pg. 1.

earned \$7,348.93 in 2010 and his estimated income for 2011 is \$15,750.93.²⁰ CSSD correctly calculated his 2010 child support at \$134 per month, based on his 2010 income.²¹ This figure is correct and Mr. N-S does not contest it.

CSSD calculated Mr. N-S's 2011 child support at \$315 per month, based on its estimation of his annual income from his first quarter earnings. He is challenging the 2011 figure because he was laid off from one of his jobs before the end of the third quarter of the year and has been unable to find other employment. His only remaining employment is a part-time restaurant job. As a result, his total income for 2011 should be estimated using his most recent earnings figures rather than just his first quarter earnings.

Based on all of the evidence presented, Mr. N-S's child support obligation for 2011 is now correctly calculated at \$253 per month. This figure is derived from an estimation of the obligor's total annual income in 2011, which was taken from all of his earnings records through the end of the third quarter.²² For the initial calculation, CSSD only had access to Mr. N-S's first quarter earnings. Because it is based on the most up-to-date information, the latest calculation more accurately estimates his total income for the year.

B. Credit for direct payments

Mr. N-S's primary issue concerns his request for direct credit for payments he made to Ms. E for supplies for D, for rent payments to Ms. E's landlord, and for payments he made to an attorney and for DNA testing, the results of which establish his paternity of the child. Several questions were posed to Mr. N-S during the hearing in an attempt to have him clarify what expenditures he had made for which he was requesting a direct credit. He finally acknowledged that he did not want a "credit" for the attorney fees and DNA testing, but rather just wanted recognition that he had expended substantial resources on establishing that he is D's biological father and that he is not a "deadbeat dad."

CSSD may give the obligor credit for direct payments made "before the time the obligor is ordered to make payments through the agency," so long as the direct payment was not made before the first date support is due in the administrative child support action.²³ An obligor who

²⁰ Exh. 8.

²¹ Exh. 3 at pg. 7.

²² See Exh. 8.

²³ AS 25.27.020(b).

requests such credit must prove by clear and convincing evidence that he or she actually made the payments.²⁴ In this case, Mr. N-S would have to show he made payments or purchases before he was served with CSSD's Administrative Child Support and Medical Support Order on July 12, 2011.²⁵

Mr. N-S requested an extension of time after the hearing in order to request a supplemental hearing and to subpoena a woman named "P," whom he identified as possibly being Ms. E's landlord. Mr. N-S claims he made payments to P on Ms. E's behalf for rent and possibly for other expenses. He was given until November 23, 2011, to request a supplemental hearing and to file a subpoena for the administrative law judge's signature to order P to appear and provide testimony. Mr. N-S did not request a supplemental hearing or a subpoena, so it appears that he has abandoned his request for direct credits that involve Ms. E's landlord.

Mr. N-S submitted copies of nine receipts, most from the No Name Target store, that appear to have been for the purchase of supplies for a baby, such as diapers and wipes.²⁶ Only four of the receipts clearly show all of the required essentials of the transaction such as a date preceding July 12, 2011, the specific items purchased and their price.²⁷ The total of these items is \$91.89.²⁸

Based on all the evidence in the record, Mr. N-S has not met his burden of proving by "clear and convincing evidence" that he is entitled to a direct credit for items which appear on the receipts he submitted. In addition to having "P" testify about payments Mr. N-S may have made to her on D's behalf, one of the reasons for a supplemental hearing was to obtain his testimony about any purchases he claims to have made for supplies for D. But he did not request a supplemental hearing in the time allowed, so all Mr. N-S has provided is a group of receipts for miscellaneous purchases made at the No Name Target store. Without additional evidence about the circumstances surrounding these purchases, several questions remain about the receipts. In the absence of that additional evidence, there is no "clear and convincing evidence" that would

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Id.

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See Exh. 3 at pg. 14.

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Exh. 9 at pgs. 5-8.

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Exh. 9 at pgs. 5, 6, 7. One of the receipts lists an item identified as "Potty," that cost \$25.09, which is not adequately identified and thus could not be included. *See* Exh. 9 at pg. 5, bottom receipt.

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$\$16.99 \times 3 + \$20.99 + \$19.93 = \$91.89.$

entitle Mr. N-S to a credit for direct payments made prior to having been served with the initial child support order.

IV. Conclusion

Mr. N-S did not meet 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. N-S's child support has been correctly calculated at \$134 per month from February 2010 through December 2010; and \$253 per month from January 2011 through December 2011, and ongoing. These calculations should be adopted. Mr. N-S did not submit clear and convincing evidence proving that he is entitled to a credit for direct child support payments.

V. Child Support Order

- Mr. N-S is liable for support for D in the amount of \$134 per month from February 2010 through December 2010; and \$253 per month from January 2011 through December 2011, and ongoing;
- All other provisions of CSSD's Administrative Review Decision dated October 7, 2011, remain in full force and effect.

DATED this 15th day of December, 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 3rd day of January, 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.]