

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

| | | |
|-------------------|---|---------------------|
| IN THE MATTER OF: |) | |
| |) | OAH No. 11-0426-CSS |
| L A. V |) | CSSD No. 001174629 |
| _____ |) | |

DECISION AND ORDER

I. Introduction

This case involves the obligor L A. V's appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on September 29, 2011. The obligee child is B, age 3. The custodian of record is J C. A.

The formal hearing was calendared for December 7, 2011, then changed to December 29, 2011.¹ Ms. V did not participate. Mr. A appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child Support and Medical Support Order is affirmed. Ms. V is liable for child support for B in the amount of \$354 per month, effective March 2011, and ongoing.

II. Facts

A. Procedural History

Mr. A began receiving public assistance benefits on B's behalf in March 2011.² CSSD initiated the process of establishing Ms. V's child support obligation by requesting financial information from her on April 8, 2011 and issuing an administrative child support order on May 16, 2011.³ She requested an administrative review.⁴ CSSD issued an Amended Administrative Child Support and Medical Support Order on September 29, 2011, that set Ms. V's ongoing child support at \$354 per month, with arrears of \$2,478 from March 2011 through September 30,

¹ Ms. V was contacted by telephone on December 7th and requested additional time, which was granted. The hearing was re-calendared for December 29th, but Ms. V could not be reached. She contacted the office later that same day and told staff that she wanted to submit a statement requesting another hearing but nothing has been received from Ms. V. The record closed on January 9, 2012, pursuant to regulation 15 AAC 05.030(j), which allows the administrative law judge to close the record and issue a decision after 10 days have passed if the person who requested the hearing has not shown reasonable cause for his or her failure to appear.

² Exh. 3 at pg. 9.

³ Pre-hearing brief at pg. 1; Exh. 1.

⁴ Exh. 2.

2011.⁵ Ms. V appealed on October 28, 2011, asserting she is a single mother and cannot afford the payment CSSD calculated, she has another child in the home, and Mr. A would not let her see B.⁶

B. Material Facts

The obligee B lives with custodial parent, J A. Mr. A applied for and began receiving public assistance benefits on B's behalf in March 2011.

Ms. V works in the personal care industry. She became employed at the No Name in late 2010 and earned an average of \$6,384.44 per quarter during the first three quarters of 2011.⁷ The Alaska Department of Labor and Workforce Development database subsequently reported that Ms. V was dismissed for misconduct on November 15, 2011, but there is no other information regarding Ms. V's termination.⁸

CSSD estimated Ms. V's total earnings for 2011 at \$23,400.⁹ CSSD reached this figure by extrapolating her year-to-date wage data from her July 15, 2011, paystub.¹⁰

III. Discussion

Ms. V filed an appeal and requested a formal hearing, but she did not participate in the hearing. Otherwise, she provided limited evidence consisting of her appeal statement and two paystubs. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear. The person who filed the appeal, in this case, Ms. V, has the burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.¹¹

A parent is obligated both by statute and at common law to support his or her children.¹² 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

⁵ Exh. 3.

⁶ Exh. 4.

⁷ $\$6,530.33 + \$6,458.37 + \$6,164.63 = \$19,153.33 \div 3 = \$6,384.44$. This information was provided by the Alaska Department of Labor and Workforce Development and submitted into the record in an affidavit filed by CSSD's representative, Erinn Brian. Exh. 5.

⁸ Affidavit of Andrew Rawls, Child Support Specialist, received on January 3, 2012.

⁹ Exh. 3 at pg. 8.

¹⁰ Exh. 2 at pg. 2; Exh. 3 at pg. 8.

¹¹ 15 AAC 05.030(h).

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

behalf of the child.¹³ Mr. A began receiving public assistance on B's behalf beginning in March 2011, so that is the month Ms. V's obligation to support her child through CSSD should begin.¹⁴

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." For its amended order, CSSD determined Ms. V's estimated income for 2011 was at \$23,400, based on her July 15, 2011, paystub.¹⁵ More recent income information from the Alaska Department of Labor and Workforce Development indicates that she had earned \$19,153.33 through the end of the third quarter.¹⁶ After that, Ms. V worked another 1½ quarters at No Name, so CSSD's estimate that her total earnings for the year would be \$23,400 is more likely than not very close to her actual figures. Therefore, that income amount should be utilized in Ms. V's child support determination.¹⁷ Adding the PFD and running the calculation results in a child support amount of \$354 per month.¹⁸ This figure is more likely than not correct.

Ms. V asserted in her appeal that she is a single mother and cannot afford the payment CSSD calculated, she has another child in the home, and Mr. A will not let her see B.¹⁹ However, she did not appear and present evidence on any of these issues. Thus, in the absence of any additional evidence, Ms. V did not meet her burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.

IV. Conclusion

Ms. V's child B received public assistance benefits while in the custody of the custodian, Mr. A. Ms. V is obligated to reimburse the state for those benefits in an amount to be determined by calculating her child support amount. CSSD has calculated her obligation at \$354 per month, beginning in March 2011, and ongoing. CSSD's calculations are correct and should be adopted.

V. Child Support Order

- Ms. V is liable for child support for B in the amount of \$354 per month, effective March 2011, and ongoing;

¹³ 15 AAC 125.105(a)(1)-(2).

¹⁴ See Exh. 4 at pg. 8.

¹⁵ Exh. 3 at pg. 8.

¹⁶ Exh. 5.

¹⁷ CSSD subsequently filed a child support calculation using total income of \$25,537.80, but that figure should not be used because it assumes a full four quarters of employment. See Exh. 6.

¹⁸ Exh. 3 at pg. 8.

¹⁹ Exh. 4.

- All other provisions of the Amended Administrative Child Support and Medical Support Order dated September 29, 2011, remain in full force and effect.

DATED this 11th day of January, 2012.

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 7th day of February, 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.]