

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

IN THE MATTER OF)	
R E. K)	OAH No. 11-0434-CSS
_____)	CSSD No. 0011732729

CORRECTED DECISION AND ORDER¹

I. Introduction

This case is R E. K’s appeal of the order establishing his child support obligation for his children, S, A and O. The Child Support Services Division (Division) issued this order. Mr. K’s appeal was referred to the Office of Administrative Hearings and assigned to Administrative Law Judge Mark T. Handley.

On November 28, 2011, a hearing was held to consider Mr. K’s appeal. Mr. K participated. L P, the custodian of record, also participated. Ms. P was represented by her attorney Michael D. Shaffer. The Division was represented by Andrew Rawls, Child Support Services Specialist. The hearing was audio-recorded. The record closed on December 23, 2011.

The Division’s order is adjusted based the Division’s latest calculations using updated income information. These result in monthly child support amounts of \$525 for the month of December 2010, \$588 for all the months of 2011, and \$754 beginning in 2012. Mr. K did not meet his burden of proof to show that he was entitled to any credits for direct or in-kind contributions of child support.

II. Facts

In December of 2010, Ms. P applied for public assistance for S, A and O.² Paternity is not in dispute. Mr. Kessler is named as the father of S, A and O on their birth certificates.³

The Division served Mr. K with an Administrative Child and Medical Support Order on June 22, 2011.⁴ The order set ongoing monthly child support and established arrears beginning

¹ In the Matter of R E. K Decision and Order was issued and distributed to the parties. The Division filed a request that typographical errors discovered in the proposed decision by corrected. Therefore, this corrected decision is issued in place of the original proposed decision and adopted as the final decision. This corrected decision is issued under the authority of 2 AAC 64.350(b).

² Exhibit 6, page 12.

³ Exhibit 1-3.

⁴ Division’s Pre Hearing Brief, page 1 & Exhibit 1.

in December of 2010. In this order, the Division set Mr. K's monthly child support obligation for S, A and O at \$525. This monthly ongoing child support obligation in this order was calculated using Mr. K's 2010 earnings reported from the Department on Labor plus a PFD.⁵

Mr. K appealed his child support order.⁶

The Division issued an Administrative Review Decision on October 4, 2011. This decision simply upheld the Administrative Child and Medical Support Order and declined to give Mr. K credit for his claimed in-kind contributions of child support.⁷

Mr. K requested a formal hearing.⁸

Prior to the hearing, the Division provided information on reported earnings from Mr. K's employers. The Division also provided a copy of a domestic violence restraining order granting primary custody of the children to Ms. P.⁹

At the hearing, Mr. K asked that he be given credit for the mortgage and utility payments he paid for the house that Ms. P and the children were living in during part of the period covered by the order. Mr. K sold this house. He could not live there after January of 2011 due to the court order. He and Ms. P did not agree that these payments would be credited against his child support obligation. Mr. K tried to avoid making some of these payments and tried to get Ms. P out of the house, but made these payments to avoid foreclosure and to satisfy his creditors. Mr. K did not make any payments of child support directly to Ms. P.¹⁰

Mr. K admitted that he earned \$15 per hour at his current job. After the hearing a post hearing order was issued giving the parties to provide additional documentation and arguments. The Division filed new calculations based on updated income information for 2011 and full-time \$15 per hour wage earnings for 2012 and ongoing. For the three children, these calculations result monthly in child support amounts of \$588 for 2011, and \$754 beginning in 2012. Child support for the month of December 2010 remains as \$525 based on Mr. K's 2010 income.¹¹

Based on the evidence in the record, I find that it is more likely than not that these new calculations are correct and that the income used in these calculations is correct. I also find that

⁵ Exhibit 1, page 7.

⁶ Exhibit 2.

⁷ Exhibit 4.

⁸ Exhibit 5.

⁹ Exhibit 7.

¹⁰ Recording of Hearing - Testimony of Mr. K, Testimony and Affidavit of Ms. P & Exhibits 7-9.

it is more likely than not that these calculations are based on the best estimate of Mr. White's 2011 and ongoing income and earning capacity.¹² Based on the evidence in the record, I find Mr. K did not show that the Division's determinations in not giving him credit for his claimed in-kind payments of child support were incorrect.¹³

III. Discussion

The monthly amounts of child support in this case should be adjusted based on the updated income information and the Division's latest calculations because this is the final administrative order, and the Division's order was still within the administrative appeals process and subject to adjustment when this information became part of the record.

In a child support hearing, the person who filed the appeal, in this case Mr. K has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁴

Mr. K did not meet his burden to show that that the Division's determination not to give him credit for his claimed in-kind payments of child support were incorrect.

Credits for direct payments of child support are allowed even after an obligor has a child support order and has been notified that he should pay through CSSD, as long as the payments are not for a period when the children were receiving public assistance and the obligor provides clear and convincing evidence that the payments were made.¹⁵ These strict rules that apply to credits for direct and in-kind payments of child support do not all apply to payments made prior to the establishment of a child support order.¹⁶

The regulations that govern credits for direct and in-kind payments when establishing pre-order arrears are 15 AAC 125.105 (b), (c), & (d). Credit for direct payments against pre-order arrears are granted on a mere showing that it is likely that the payments were made under 15 AAC 125.105(b). Mr. K admitted at the hearing that he did not make any direct payments in the sense of money paid directly to Ms. P during the period covered by this order.

Under 15 AAC 125.105(c), credits for in-kind payments of child support against pre-order arrears are limited to in-kind contributions of support that were agreed on in writing by

¹¹ Recording of Hearing - Testimony of Mr. K & Exhibits 8-9.

¹² Recording of Hearing & Exhibits 8-9.

¹³ Recording of Hearing - Testimony of Mr. K.

¹⁴ Alaska Regulation 15 AAC 05.030(h).

¹⁵ Alaska Regulation 15AAC 125.465.

¹⁶ See *State of Alaska, Department of Revenue, Child Support Enforcement Division v. Campbell* 931 P.2d 416, *Ogard v. Ogard*, 808 P.2d 815, 817 (Alaska 1991) & Alaska Regulation 15AAC 125.105(b) & (c).

the parents. Mr. K did not show that there was any agreement written or otherwise that his claimed credits for paying the mortgage and utilities would be credited against his child support obligation. Credits for in-kind payments cannot be given during a period when the child received public assistance. The children were receiving public assistance during the first two months covered by this order.

The definition of “in-kind” contributions found in 15 AAC 900(a)(17) describes in-kind payments as contributions of goods and services, and payments to third parties. All of Mr. K’s claimed contributions of child support were to third parties, so even if they were for child support, these payments do not qualify to be credited because there was no agreement. Furthermore, the payments were not child support. These payments were made to protect Mr. P’s investment in the house, not to provide for his children. All of these payments benefited Mr. K as well as Ms. P and the children. Mr. K was trying to sell his house. Mr. K was prohibited from going near the house by court order. It was to his benefit that the house was occupied and heated rather than empty. It was important to Mr. K that the mortgage continued to be paid and that the house was occupied and heated during this period so that its value to him was protected pending the intended sale.

IV. CHILD SUPPORT ORDER

1. Mr. K’s ongoing child support for S, A and O is at \$754 per month effective February 1, 2012.
2. Mr. K is liable for child support arrears for S, A and O in the monthly amounts of \$525 for the month of December 2010; \$588 for all of the months of 2011; and \$754 for the month of January 2012.
3. Mr. K is not entitled to any credits for direct or in-kind payments of child support.
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for S, A and O.
5. All other provisions of the Administrative Review Decision issued on October 4, 2011, and the Administrative Child and Medical Support Order on June 22, 2011 remain in effect.

DATED this 22nd day of February 2012.

By: Signed
Mark T. Handley
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 6th day of March, 2012

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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