

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

IN THE MATTER OF:	)	
	)	OAH No. 11-0435-CSS
B A. E	)	CSSD No. 001171092
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**DECISION AND ORDER**

**I. Introduction**

The custodian of record, E D. E, filed the appeal in this child support matter. The children are J, K, B, C, M and W, all of whom range in age from 4-16 years of age.

The formal hearing was held on November 30, 2011. Ms. E participated in person; Mr. E appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. E's child support from September 2010 through January 2011 is vacated. Ms. E is, however, liable for support in the amount of \$1,340 per month for six children, effective February 1, 2011, and ongoing.

**II. Facts**

*A. Procedural History*

Mr. E applied for and began receiving public assistance for the children in September 2010.<sup>1</sup> CSSD initiated the process of establishing Ms. E's child support obligation and issued an administrative child support order on April 22, 2011.<sup>2</sup> Both parties requested an administrative review, after which CSSD issued an Amended Administrative Child and Medical Support Order on July 12, 2011, that set Ms. E's ongoing child support at \$860 per month, with arrears of \$11,882 from September 2010 through July 2011.<sup>3</sup> On July 29, 2011, Ms. E telephoned and visited CSSD to discuss the order but was apparently told she would have to request a modification, which she did on August 25, 2011.<sup>4</sup> CSSD then issued a modification order, which Mr. E appealed.<sup>5</sup> The appeal was referred to the Office of Administrative Hearings as a

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<sup>1</sup> Pre-Hearing Brief at pg. 1; Exh. 2 at pg. 8.  
<sup>2</sup> Pre-hearing brief at pg. 1; Exh. 2.  
<sup>3</sup> Exh. 5.  
<sup>4</sup> Exh. 6.  
<sup>5</sup> Exhs. 8 & 9.

modification action, but CSSD and the parties agreed at the beginning of the hearing that Ms. E's communication to CSSD on July 29<sup>th</sup> was an appeal of the amended order and should have been perceived as such. As a result, CSSD requested that the modification order issued on October 17, 2011, be vacated. The motion was granted and the order doing so will be included in the order section of this decision.

*B. Material Facts*

Based on the record as a whole, the following facts are established by a preponderance of the evidence based on the testimony of Ms. E, Mr. E, and the documents submitted into evidence.

Ms. E and Mr. E are the parents of J, K, B, C, M and W. The family moved to Alaska from Montana in 2009. Both parties worked intermittently, but Ms. E was employed the most and Mr. E provided the bulk of the child care and related tasks, such as providing the children's transportation back and forth to school. Ms. E worked in a series of temporary jobs for No Name and the No Name Corporation from October 2009 through August 2011. In September 2011 she began her current full-time, permanent employment with the No Name Regional Corporation.

The parties cohabitated with the children in a home in No Name through October 2010. With their intermittent employment they were not able to keep up with the rent so they were evicted at that time. The family stayed in a local motel for two weeks, which Ms. E paid for.<sup>6</sup> They were then admitted into a family shelter.<sup>7</sup> They resided at the shelter until January 23, 2011, at which time Mr. E took the children and moved back to Montana.<sup>8</sup> Ms. E remained at the shelter for a few days, then found housing with friends.<sup>9</sup>

Ms. E flew down to Montana to visit the children for a few days at a time in February, March and April 2011. In June 2011, she flew down again but stayed for ten days. Her next short trip occurred just two weeks before the hearing in November 2011. She incurred expenses during her trips, but the bulk of them appear to have been for gifts and expenses while sharing activities with the children. None of the expenses on her list can be classified as direct child support.<sup>10</sup> However, since Mr. E moved to Montana, Ms. E has made direct payments to him for child support in the total amount of \$4,600. Ms. E made these payments via wire transfer to a

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<sup>6</sup> Exh. A.

<sup>7</sup> Exh. B.

<sup>8</sup> Testimony of Ms. E.

<sup>9</sup> *Id.*

<sup>10</sup> *See* Exh. H.

joint bank account in Montana on the following dates in 2011: March 25<sup>th</sup>, April 26<sup>th</sup>, May 10<sup>th</sup>, July 1<sup>st</sup> and July 12<sup>th</sup>.<sup>11</sup>

Ms. E worked for three employers in 2010 and earned a total of \$28,194.20 for the year,<sup>12</sup> plus the PFD of \$1,281. A child support amount for six children from that income figure is \$860 per month.<sup>13</sup> In 2011, Ms. E worked for two employers, and her second job, which she started in September of that year, is now a permanent position. In 2011, Ms. E earned \$47,425.26, and also received \$316 in unemployment benefits,<sup>14</sup> plus the PFD of \$1,174. A child support calculation using her total 2011 income is \$1,340 per month for six children; \$1,244 for five children; \$1,149 for four children; \$1,053 for three children; \$862 for two children; and \$638 for one child.<sup>15</sup>

### III. Discussion

Ms. E requested the formal hearing in this matter. She challenges the calculation of her support obligation, the period during which arrears have been assessed, and the denial of credit for payments made directly to Mr. E. This matter was originally referred to the OAH as an appeal of a modification order, but the procedural history suggested that Ms. E had appealed the earlier establishment of her support obligation. The parties agreed at the hearing that she is entitled to a hearing as to the accuracy of the Amended Administrative Child Support and Medical Support Order, and that the later modification is therefore moot.

As the person who filed the appeal, Ms. E has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.<sup>16</sup>

#### A. *Time Period Support Obligation Begins*

A parent is obligated both by statute and at common law to support his or her children.<sup>17</sup> 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

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<sup>11</sup> Exh. C.

<sup>12</sup> Exh. 10.

<sup>13</sup> Exh. 5 at pg. 8.

<sup>14</sup> Exh. 17.

<sup>15</sup> Exh. 18.

<sup>16</sup> 15 AAC 05.030(h).

<sup>17</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

behalf of the children, up to six years prior to the date the action was initiated.<sup>18</sup> Mr. E received public assistance for the children from September 2010 through January 2011.<sup>19</sup> CSSD began collecting support from Ms. E as of September 2010, but she is not liable for support until February 2011. Mr. E claimed Ms. E did not support the family after they were evicted from their home in October 2010, but the documents Ms. E submitted show that she paid for the family's subsequent stay at a local motel and the family shelter until Mr. E moved to Montana with the children in January 2011. She also testified that she stayed at the shelter with the children, a fact that Mr. E acknowledged during the hearing. Thus, for purposes of the child support action, Ms. E was also a custodial parent of the children until they left Alaska with their father. As a result of being a custodial parent through January 2011, Ms. E is not liable for support until February 1, 2011.

*B. Child support calculation*

Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. After the hearing, Ms. E provided evidence of the 2011 year-end income she received from her employer,<sup>20</sup> which CSSD confirmed with information from the Alaska Department of Labor and Workforce Development.<sup>21</sup> CSSD then used her actual income to correctly calculate Ms. E's 2011 and ongoing child support obligation at \$1,340 per month for six children (\$1,244 for five children; \$1,149 for four children; \$1,053 for three children; \$862 for two children; and \$638 for one child).<sup>22</sup>

*C. Credit for Direct Payments*

Ms. E claimed in her appeal that she made direct payments of support to Mr. E after he returned to Montana with the children. She made wire transfers totaling \$4,600 to their joint bank account in Montana on the following dates in 2011: March 25<sup>th</sup>, April 26<sup>th</sup>, May 10<sup>th</sup>, July

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<sup>18</sup> 15 AAC 125.105(a)(1)-(2).

<sup>19</sup> See Exh. 5 at pg. 10.

<sup>20</sup> Exh. I.

<sup>21</sup> Exh. 17.

<sup>22</sup> Exh. 18. CSSD also calculated a 2012 support amount, but at \$1,401 per month for six children, that figure is less than the 15% increase that would support a modification, so it should not be used. See Exh. 19. Rather, the 2011 figure should be used as the 2012 and ongoing amount. See Civil Rule 90.3(h)(1).

1<sup>st</sup> and July 12<sup>th</sup>.<sup>23</sup> Mr. E claims that the payments were not for support, that they were payments on joint loans the parties owed to third parties.

CSSD may give an obligor credit for direct payments made “before the time the obligor is ordered to make payments through the agency,” so long as the direct payments were not made before the first date support is due in the administrative child support action.<sup>24</sup> An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.<sup>25</sup> Based on Ms. E’s testimony and the copies of the wire transfers, Ms. E met her burden of proof and is entitled to the direct credit totaling \$4,600. Mr. E’s testimony was not supported by any documentary evidence.

#### **IV. Conclusion**

The Modified Administrative Child Support and Medical Support Order CSSD issued on October 17, 2011, should be vacated. By agreement of the parties, this matter was heard as an appeal of CSSD’s Amended Administrative Child and Medical Support Order dated July 12, 2011.

Ms. E met her burden of proving by a preponderance of the evidence that CSSD’s amended order was incorrect, as required by 15 AAC 05.030(h). Ms. E is not liable for support from September 2010 through January 2011, as she was a custodial parent during that time frame. Ms. E is liable for support from January 2011 forward – the support amount has been correctly calculated in the amount of \$1,340 per month for six children (\$1,244 for five children; \$1,149 for four children; \$1,053 for three children; \$862 for two children; and \$638 for one child). These figures should be adopted.

Ms. E is eligible for a credit for direct payments made in the total amount of \$4,600 from March 2011 through July 2011.

Finally, there is no finding in this appeal of a variance under Civil Rule 90.3(c).

#### **V. Child Support Order**

- The Modified Administrative Child Support and Medical Support Order CSSD issued on October 17, 2011 in Ms. E’s case is vacated;

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<sup>23</sup> Exh. C.

<sup>24</sup> AS 25.27.020(b).

<sup>25</sup> *Id.*

- Ms. E is not liable for support from September 2010 through January 2011 because she was a custodial parent during that time;
- Ms. E is liable for ongoing support in the amount of \$1,340 per month for six children (\$1,244 for five children; \$1,149 for four children; \$1,053 for three children; \$862 for two children; and \$638 for one child), effective February 2011 and ongoing;
- Ms. E is eligible for a credit for direct payments made in the total amount of \$4,600 from March 2011 through July 2011;
- All other provisions of the Amended Administrative Child and Medical Support Order dated July 12, 2011, remain in full force and effect.

DATED this 25<sup>th</sup> day of May, 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 18<sup>th</sup> day of June, 2012.

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

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