

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

IN THE MATTER OF:)	
)	OAH No. 12-0769-CSS
O M. L)	CSSD No. 001182652
_____)	

DECISION AND ORDER

I. Introduction

The obligor, O M. L, appealed an Administrative Review Decision that the Child Support Services Division (CSSD) issued on October 2, 2012. The child in this case is J, 2. The other parent is C R. Q.

The formal hearing was held on November 14, 2012. Both parties participated by telephone, as did Erinn Brian, Child Support Specialist, who represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. L is liable for support for J from August 2011 through February 2012 in the amount of \$78 per month; and \$50 per month, effective March 2012 and ongoing.

II. Facts

A. Procedural history

Ms. Q applied for and began receiving Medicaid benefits for J in July 2010.¹ CSSD requested financial information from Mr. L and then issued an Administrative Child Support and Medical Support Order on July 25, 2012.² The order set Mr. L's ongoing child support amount at \$50 per month, with arrears of \$1,892 for the period from July 2010 through July 2012.³ Mr. L requested an administrative review, after which CSSD again requested financial information.⁴ He did not submit any evidence, so CSSD issued an Administrative Review Decision on October 2, 2012, that affirmed its earlier administrative child support order.⁵ Mr. L appealed on October 11, 2012, asserting he was in the home with J.⁶ Prior to the hearing, CSSD filed an affidavit

¹ Pre-Hearing Brief at pg. 1; Exh. 2 at pg. 10.
² Pre-Hearing Brief at pg. 1; Exh. 1.
³ Exh. 1.
⁴ Pre-Hearing Brief at pg. 1.
⁵ Exh. 2.
⁶ Exh. 3.

outlining Mr. L's wage information that the agency had obtained from the Alaska Department of Labor and Workforce Development.⁷

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 Mr. L, Ms. Q, and the documents submitted into evidence.

Mr. L and Ms. Q are the parents of J, who is two years of age. The parties were living together prior to her birth in 00/00/10. After J was born, they continued to live together. However, Mr. L was incarcerated for a probation violation the next month, August 2010, and spent 25 days in jail. When he was released, he and Ms. Q and J were back together and cohabitating into early 2011. They got an apartment together during part of that time period and also lived with members of Ms. Q's family. Mr. L was incarcerated again in March 2011 for 13 days. He got out on a third-party release, so he and Ms. Q and J lived with members of his family in the village. Mr. L went back to jail again on April 8, 2011, and remained there until the end of May 2011. He and Ms. Q were together again after his release, but by the time J had her one-year birthday in 00/00/11, the parties were permanently separated.

According to the Alaska Department of Labor and Workforce Development, Mr. L earned \$6,598.70 during 2010.⁸ A child support amount calculated from this income figure equals \$101 per month.⁹ In 2011, he earned \$5,075.¹⁰ A child support amount calculated from this income equals \$78 per month.¹¹ Mr. L was still working at the beginning of 2012, but he had only earned \$375 prior to February 21, 2012.¹² Mr. L has been incarcerated continuously since that date, and his tentative release date is in May 2013.¹³ Based on his incarceration, Mr. L's 2012 and ongoing child support obligation is calculated at \$50 per month, effective as of March 2012.¹⁴

⁷ Exh. 4.

⁸ Exh. 4.

⁹ Exh. 1 at pg. 7.

¹⁰ Exh. 4.

¹¹ Exh. 1 at pg. 8.

¹² Exh. 4.

¹³ Pre-Hearing Brief at pg. 2.

¹⁴ Exh. 1 at pg. 9.

III. Discussion

Mr. L requested the formal hearing in this matter. His appeal presents only one narrow issue – a determination of the time periods during which he is obligated to pay support for J. CSSD has charged him with support as of 00/00/10, the month she was born.

As the person who filed the appeal, Mr. L has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision that affirmed its Administrative Child Support and Medical Support Order is incorrect.¹⁵

A. *Time Period Support Obligation Begins*

A parent is obligated both by statute and at common law to support his or her children.¹⁶ 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.¹⁷ Ms. Q applied for and began receiving Medicaid benefits on J's behalf in July 2010. However, both parties testified essentially that they were together as an intact family until J reached at the age of one year. Thus, for purposes of the child support action, Mr. L was also a custodial parent until he and Ms. Q separated about the time of J's first birthday. As a result of being a custodial parent through July 2011, Mr. L is not liable for paying support for J until August 2011, the next month after her birthday.

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. CSSD obtained Mr. L's most recent wage data from the Alaska Department of Labor and Workforce Development.¹⁸ CSSD then used his actual income figures to calculate his arrears and ongoing child support obligation. Since he is no longer liable for support during 2010, his support obligation begins in mid-2011. CSSD calculated his child support for that year at \$78 per month, based on the income he received during the calendar year.¹⁹ This amount is correct and should continue into 2012 because Mr. L was still employed at the beginning of 2012 and did not return to jail until February 21, 2012. Because he has been incarcerated continuously

¹⁵ 15 AAC 05.030(h).

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁷ 15 AAC 125.105(a)(1)-(2).

¹⁸ Exh. 17.

since then, Mr. L is liable for ongoing child support as of March 2012 in the statutory minimum amount of \$50 per month. This amount should continue until he is released and gets back into the workforce.

IV. Conclusion

Mr. L met 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. L is not liable for support for J from July 2010 through July 2012 because the parties were living together and he was a custodial parent during that time frame. Mr. L is liable for support from August 2011 through February 2012 in the amount of \$78 per month for one child. As of March 2012, his child support should be set at the minimum amount of \$50 per month, due to his incarceration. These figures should be adopted.

There was no request for or grant of a variance under Civil Rule 90.3(c) in this appeal.

V. Child Support Order

- Mr. L is liable for support for J from August 2011 through February 2012 in the amount of \$78 per month; and \$50 per month, effective March 2012 and ongoing;
- Mr. L is not liable for support in this administrative child support case prior to August 2011 because he was a custodial parent through July 2011;
- All other provisions of the October 2, 2012 Administrative Review Decision that affirmed the Administrative Child and Medical Support Order dated July 25, 2012, remain in full force and effect.

DATED this 4th day of December, 2012.

Signed _____
Kay L. Howard
Administrative Law Judge

¹⁹ Exh. 1 at pg. 8.

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 21st day of December, 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.]