

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

In the Matter of:)

C A. C)

OAH No. 13-0277-CSS

CSSD No. 001064310

DECISION AND ORDER

I. Introduction

C A. C appealed an Amended Administrative Child and Medical Support Order that CSSD issued on February 15, 2013. The obligee child is A, 16.

The hearing was held on March 26, 2013 and May 6, 2013. Both Mr. C and the custodian of record, H M. N, appeared for both sessions of the hearing. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD.

Based on all the evidence, CSSD's Amended Administrative Child and Medical Support Order dated February 15, 2013 is affirmed. Mr. C is liable for child support for A for July 2012 in the amount of \$168. His request for credit for the month of July 2012 for direct payments made to Ms. N is denied.

II. Facts

A. Procedural History

Ms. N began receiving Medicaid benefits on A's behalf in late 2010.¹ During the month of July 2012, she received public assistance.² Beginning in August 2012, A began living with Mr. C. CSSD initiated a child support action against Mr. C, which culminated in the agency issuing an Amended Administrative Child and Medical Support Order on February 15, 2013 that charged him only for the month of July 2012.³ Mr. C filed an appeal on February 26, 2013.⁴

B. Material Facts

Mr. C and Ms. N are the parents of A, 16. Custody of A was with Ms. N through July 2012. As of August 2012, A began living with Mr. C. The custody change is not in dispute.

The parties are the owners of, and used to cohabitate in, a mobile home in No Name. They separated sometime prior to July 2012. Ms. N remained in the home and Mr. C obtained housing elsewhere. A lived with Ms. N at the time.

¹ Exh. 1 at pg. 11.

² *Id.*

³ Exh. 4.

⁴ Exh. 5.

Ms. N's circumstances required her to obtain a public assistance cash grant in July 2012.⁵ She had fallen behind in the mortgage and space rent for the mobile home. On July 25, 2012, Mr. C made a payment of \$5,145 to bring the mortgage up to date⁶ and on July 30, 2012, he paid \$495 to bring the space rent current. Of that \$495, \$35 of the total was for the remainder of the July 2012 space rent, \$50 was for the July late fee, and \$410 was for the August 2012 space rent.⁷

A began living with Mr. C in August 2012.

III. Discussion

A. Child Support Obligation

The person who files the administrative appeal has the burden of proving that the order CSSD issued is incorrect.⁸ On February 15, 2013, CSSD issued an Amended Administrative Child and Medical Support Order that charged Mr. C with child support of \$168 for the month of July 2012.⁹ The calculation is based on his actual income.¹⁰

A parent is obligated both by statute and at common law to support his or her children.¹¹ In general, this obligation begins when the child is born.¹² In administrative child support cases, CSSD's regulations require the agency to collect 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.¹³ According to CSSD, Ms. N received one month of cash public assistance in July 2012 for which Mr. C is being charged child support. Thereafter, the child A began living with Mr. C, so the obligor is not liable for support while A lives with him.

B. Direct Credit

Mr. C is not appealing the amount of the support obligation, just the fact that he has to pay it. He claims he should not have to pay support for A for July 2012 because by paying the mortgage and bringing the space rent current, he was making a direct child support payment to Ms. N rather than through CSSD.

⁵ Exh. 8. Ms. N stated her cash grant started in May 2012, but it is not clear from Exhibit 7, pg. 2, the document she provided, specifically what she was receiving as of that month. Regardless, CSSD is charging Mr. Bean only for July 2012, so the fact that Ms. N may have received some type of benefits earlier is thus moot.

⁶ Exh. 6 at pg. 2.

⁷ *Id.*

⁸ 15 AAC 05.030(h); 2 AAC 64.290(e).

⁹ Exh. 4 at pg. 9.

¹⁰ Exh. 4 at pg. 8.

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹³ 15 AAC 125.105(a)(1)-(2).

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.¹⁴ An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.¹⁵

There is no dispute that Mr. C brought the mobile home mortgage up to date, paid the balance of the July 2012 space rent, and paid all of the August 2012 space rent. Ms. N acknowledged the payments and CSSD does not dispute them. Rather, CSSD claims that Mr. C should not get credit because the payments were not made directly to Ms. N and because the noncustodial parent must reimburse the state for public assistance monies paid on a child’s behalf, pursuant to AS 25.27.120. Ms. N also objects to the credit because she believes Mr. C made them in an attempt to reconcile their relationship.

Mr. C is not entitled to a credit for the payments he made on the mobile home and space rent. He and Ms. N both own the home and they are both responsible for it. As a result, Mr. C cannot get a credit against his child support obligation for payments he was essentially making on his own behalf and toward his own financial interests. It might possibly be a different story if Ms. N owned it by herself, but that is not the circumstance in this case.

A second reason Mr. C is not entitled to a credit against his child support obligation is because it is not clear from the record that Ms. N considered the payments child support. The Alaska Supreme Court has stated that it is the custodial parent’s prerogative “to decide how to spend the support money on the children.”¹⁶ A non-custodial parent should not be able to claim credit that overrules the decisions of the custodial parent. To reduce Mr. C’s child support would in essence credit him for payments he made as a convenience for himself and that were not specifically intended to constitute child support.

IV. Conclusion

Mr. C did not meet his burden of proving by a preponderance of the evidence that CSSD’s Amended Administrative Child and Medical Support Order was incorrect. His payment of the mortgage and space rent did not constitute child support and he is not entitled to a credit based on those payments.

¹⁴ AS 25.27.020(b).

¹⁵ *Id.*

¹⁶ *CSSD v. Campbell*, 931 P.2d 416, 420 (Alaska 1997).

V. Child Support Order

- CSSD's Amended Administrative Child and Medical Support Order dated February 15, 2013 is AFFIRMED.

DATED this 30th day of May, 2013.

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 17th day of June, 2013.

By: *Signed*

Signature

Jeffrey A. Friedman

Name

Administrative Law Judge

Title

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