

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

In the Matter of:)	
)	OAH No. 14-0233-CSS
C S. Q)	CSSD No. 001139185
_____)	

DECISION AND ORDER

I. Introduction

C Q requested an administrative review of reinstatement of child support obligation and consequent assessment of child support arrearages. His request was treated as an appeal of a Modified Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on November 20, 2013. The support is for his twelve-year-old son K. The other party is B A.

The telephonic formal hearing was held on March 12, 2014. Both Mr. Q and Ms. A appeared and testified. Russell Crisp, Child Support Specialist, represented CSSD. The record closed on March 21, 2014.

Mr. Q cannot obtain a formal administrative appeal of the reinstatement of his arrearages. He is, however, entitled to an administrative review of the reinstatement, and may appeal the decision upon review to the superior court. To the extent that Mr. Q was appealing the November 20, 2013, Modified Administrative Child and Medical Support Order, that order is affirmed.

II. Facts

Mr. Q is the father of 12-year old K. K lives half time with his mother, B A, and half time with Mr. Q.

In 2007, following a formal hearing, Mr. Q's ongoing child support obligation for K was set at \$125 per month.¹ For a time before the 2007 case was resolved, Ms. A had full custody of K. Mr. Q had been out of state and Ms. A was living in No Name. Around the time that the order was issued, March 2007, both parties moved to No Name and began to share custody on a 50/50 basis. Ms. A began to earn substantially more money than Mr. Q. The 2007 decision,

¹ Exhibit 1.

apparently, was based on evidence from the time when Ms. A had custody for 57 percent of the time and Mr. Q had custody for 43 percent of the time, and Mr. Q's income exceeded Ms. A's.

Because of the new custody arrangement and income levels, even before the 2007 order was issued, Ms. A and Mr. Q had reached an agreement that CSSD would not need to enforce the order and collect child support from Mr. Q. Apparently, the parties had advised the administrative law judge of this agreement, and the order itself noted that CSSD would not be collecting child support from Mr. Q. The order advised, however, that:

Mr. Q remains liable for support in the amount of \$125 per month, and the division may pursue collection of arrears as well as ongoing support if it resumes enforcement of the order.²

In September 2008, Mr. Q became concerned about his exposure, and sent the following question by email to CSED:

Is there a way to update the information that the state has about me to adjust the amount of child support I am on record as potentially owing? My problem is that I have my son 50% of the time now, I pay for 50% of his expenses or more, and his mother consistently threatens to reinstate this child support upon me.³

Although Mr. Q had no record of ever receiving a reply to this email, CSSD's records show that a reply was sent to Mr. Q in September 2008 advising him that he would need to submit a request for modification form to have the case reviewed.⁴ Until 2013, however, Mr. Q did not submit a request for modification.

On July 25, 2013, Mr. Q filed an application for services with CSSD, seeking to have support determined based on current income for himself and Ms. A, and their 50/50 shared custody arrangement.⁵ CSSD served Notices of Petition for Modification on the parties on August 14, 2013.⁶ On November 20, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order, setting Mr. Q's ongoing support at \$0 per month, effective September 1, 2013.⁷ The parties were informed that they could appeal this order to a formal

² Exhibit 1 at 3 (*In re C S. Q*, OAH No. 07-0023-CSS (Department of Revenue 2007)).

³ Exhibit 16 at 1.

⁴ Exhibit 17.

⁵ Exhibit 2.

⁶ Exhibit 5.

⁷ Exhibit 6 at 1.

hearing. The record also contains a shared custody calculation that shows, based on current income and custody, Ms. A is to pay \$114.02 per month to Mr. Q.⁸

In addition, the record contains a case note from CSSD's computer diary that indicates on December 3, 2013, CSSD notified Mr. Q that his arrears, including interest, for the \$125 per month child support order totaled \$14,171.72 from January 2006 to August 2013.⁹ The note reflects that the arrears were added to Mr. Q's balance because of a "reinstatement of support." The case note does not reveal whether the parties were told of their ability to request an administrative review of this decision.

On December 30, 2013, Mr. Q's attorney requested an administrative review of a December 7, 2013, letter from CSSD "regarding a past due balance owed of approximately \$14,171."¹⁰ Nothing in this record indicates that CSSD conducted an administrative review of the arrearages. Rather, on February 14, 2014, CSSD referred the matter to this office. The agency characterized Mr. Q's request for review as an appeal of "the Modified Administrative Child Support and Medical Support Order issued on November 20, 2013."

A hearing was held on March 12, 2014. At the hearing, Mr. Q made clear that the decision upon which he wanted review was the letter setting the arrearages.

III. Discussion

A. The OAH cannot review CSSD's December letter setting arrearages

CSSD regulation 15 AAC 125.870 strictly controls whether the OAH can review CSSD's decision to reinstate Mr. Q's arrearages. Under 15 AAC 125.870(d)(2), CSSD "will defer" collection if "the custodian of the child submits a written withdrawal from agency services." That is what occurred in this case.

As Mr. Q was advised in the 2007 decision, however, a "deferral" under this regulation does not make the obligation go away. Subsection 15 AAC 125.870(e) states that "[i]f support is deferred under (d) of this section, the agency will reinstate all deferred support upon receipt of an application for services from a party entitled to support under AS 25.27.100."

⁸ Exhibit 9. The order executing this calculation is not in this record, but the parties acknowledged it at the hearing.

⁹ Exhibit 15.

¹⁰ Exhibit 10. The letter from the attorney to CSSD dates the reinstatement communication as December 7, 2013. The case note appears to date it as December 3, 2014.

The review that a party may obtain of that reinstatement is strictly governed by subsections 15 AAC 125.870(g) and (h). Under subsection (g), a party may request “an administrative review” of a reinstatement under subsection (d). Under subsection (h), however, “[a]n administrative appeal is not available from the administrative review decision issued under this subsection.” That means that the undersigned administrative law judge cannot review or issue a decision on the reinstated child support obligation or the arrearages. Instead, an appeal of the administrative review (once one is provided) must be to the superior court.¹¹

Here, Mr. Q, through his attorney, made a timely request for an administrative review of the reinstatement decision. If CSSD has not provided an administrative review to Mr. Q as requested, that request remains valid and CSSD has an obligation to provide that review. Once provided, Mr. Q’s only avenue for appeal is to the superior court.

B. The OAH also may not address the issue under 15 AAC 125.125

At the hearing, Mr. Q also asked that the administrative law judge review the arrearages under the authority of 15 AAC 125.125. This regulation gives CSSD’s director limited authority to correct an administrative order if certain conditions are met, even if the deadline for appeal has passed. The regulation does not, however, provide an avenue for an *appeal* until after the director has been given an opportunity to address the request for relief.¹² Therefore, Mr. Q’s request for relief under 15 AAC 125.125 is premature, and must be denied.

C. The OAH also may not resolve the issue under 15 AAC 125.311

Mr. Q also requested relief under 15 AAC 125.311. This regulation requires that every three years CSSD provide a notice to each parent of a right to review. However, the regulation does not provide an avenue for an appeal of a reinstatement of arrearages. To the extent that Mr. Q has arguments under 15 AAC 125.311 that his arrearages should be abated, he must bring those arguments first to the administrative review provided under 15 AAC 125.870(g), and then, if that is not successful, to superior court.

IV. Conclusion

The only appealable order at issue is the Modified Administrative Child Support and Medical Support Order that CSSD issued on November 20, 2013. Mr. Q did not raise any

¹¹ 15 AAC 125.870(h).

¹² 15 AAC 125.125(e).

arguments opposing this order, which zeroed out his child support obligation. Therefore, the order will be affirmed. This is not a variance under Civil Rule 90.3(c).

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated November 20, 2013 is affirmed;
- Mr. Q's ongoing child support obligation for K is \$0 per month, effective September 1, 2013.

DATED this 22nd day of July, 2014.

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 8th day of August, 2014.

By: Signed

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

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