

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

In the Matter of:	)	
	)	OAH No. 14-0348-CSS
T J. C	)	CSSD No. 001129872
_____	)	

**DECISION AND ORDER**

**I. Introduction**

T J. C appealed the CSSD Director’s decision denying his petition for relief after the obligor failed to appeal an Amended Administrative Child and Medical Support Order that the agency issued on March 20, 2013. The obligee child is U, born in 2002. The other party and custodial parent is J C. T.

The formal hearing was held on March 21, 2014. M M. N, Mr. C’s mother and power of attorney, appeared on his behalf. Ms. T could not be reached and did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. A supplemental hearing was held on May 29, 2014. Mr. C was able to participate by telephone, with Ms. N assisting him. CSSD did not appear because the agency representatives’ offices were being moved at the time. Ms. T could not be reached and did not participate.<sup>1</sup>

Based upon the record and after careful consideration, Mr. C’s request for relief is granted. Mr. C is not obligated to pay support for U in this administrative child support action until April 2012, the month in which he was served with the Notice of Paternity and Financial Responsibility. Ms. T withheld his paternity from Mr. C and from the Division of Public Assistance (DPA) and CSSD until January 2012. Ms. T clearly knew Mr. C’s identity, but she withheld this information and the correct circumstances of their relationship, from state officials when paternity information was requested of her. Therefore, Mr. C should not have to pay arrears prior to service on him of the paternity complaint. Mr. C did not challenge the monthly child support amounts, so CSSD’s calculations in the Amended Administrative Child and Medical Support Order dated March 20, 2013 are affirmed, effective April 1, 2012, and ongoing. The arrears prior to April 2012 are vacated.

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<sup>1</sup> At the first hearing, one of Ms. T’s two contact numbers had been disconnected, and the other number was not answered. By the time of the supplemental hearing, both of Ms. T’s numbers were no longer in service.

## II. Facts

Mr. C and Ms. T are the parents of U, who was born in 2002. U apparently lives full-time with his mother.

Mr. C and Ms. T first met when they were in middle school in No Name. Mr. C was 14-15 years old and Ms. T was about 12 at the time. Mr. C was a good friend of her cousin, K, and the two boys would “hang out” either at K’s house or Ms. T’s house after school. Mr. C and Ms. T also went to high school together, but they did not spend much, if any, time together then. They lost contact after he graduated in 1996.

Mr. C and Ms. T got back in touch sometime during August 2001. He would visit her at her No Name apartment after he got off work and they had a two-week long sexual relationship during which U was conceived. After they broke up, Mr. C and Ms. T had no further contact. U was born in May 2002, and Ms. T began receiving public assistance benefits thereafter, although it is not clear when they began.<sup>2</sup> Mr. C had no idea he had fathered a child with Ms. T.

Beginning as early as 2004, Ms. T was asked by CSSD and the DPA on numerous occasions to identify U’s birth father, but she did not. The documents provided by CSSD for this appeal demonstrate that several times from 2004 through 2006, Ms. T informed the state that she did not know who U’s father was.<sup>3</sup> In fact, she described their relationship as a “one night stand at a party.”<sup>4</sup> CSSD closed the child support case in September 2004 after informing Ms. T the case would have to be closed because the identity of the father was unknown.<sup>5</sup> She made no attempt to correct the agency’s information.

Six years later, in April 2010, Ms. T began receiving Medicaid benefits on U’s behalf.<sup>6</sup> The record does not explain why, but on January 5, 2012, Ms. T inexplicably submitted a Paternity Information Locate Sheet to CSSD that identified Mr. C as U’s father. After receiving that information, CSSD located Mr. C and began the process of establishing his child support case for U. CSSD charged Mr. C with arrears for U’s support as of April 2010, when Medicaid

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<sup>2</sup> CSSD’s records indicate it first received a form, in agency parlance, a “603,” transmitting child support case information to CSSD from the Division of Public Assistance on April 1, 2004. Exh. 17 at pg. 1. This suggests that about that time, Ms. T had applied for benefits and completed the form, which was then forwarded to CSSD.

<sup>3</sup> See Exhs. 17-27.

<sup>4</sup> Exh. 18 at pg. 1.

<sup>5</sup> Exh. 26.

<sup>6</sup> Exh. 11 at pg. 6.

benefits for the child were initiated.<sup>7</sup> Based on his income at the time, Mr. C's arrears totaled \$32,121 from April 2010 until April 2012, when he was served with the notice of paternity.<sup>8</sup> His total arrears through November 2012 were \$42,513.<sup>9</sup>

Mr. C is married. He and his wife, S, are the parents of two boys, 5 and 2 years of age. When this case was initiated, Mr. C could not afford to pay off all of the arrears, so he and his wife sold their home. The sale netted them only \$10,000, all of which Mr. C gave to CSSD. The child support case against Mr. C had created difficulties in their marriage, so in October 2012, S and the children went to stay with her mother in No Name. He sends her \$800 per month for expenses. Mr. C remained in Alaska to be near his workplace; he is staying with his mother and contributes to Ms. N's household expenses.

Mr. C has a learning disability due to a lack of oxygen at birth and as a result, he reads at the second grade level. He received employment training from the Division of Vocational Rehabilitation (DVR), and even had the assistance of a reader while taking his driver's test. Mr. C is employed as an no name on the No Name. The job is a good fit for him because he is physically capable of doing the work; it does not require advanced reading skills.

When Mr. C was served with the child support order in November 2012, he did not understand it. He called CSSD for assistance and was told that if he disagreed with the income numbers used to calculate his child support, that he could appeal the order. Since the support calculations were based on his actual past income, he believed he could not file an appeal and therefore did not. Several months later, his mother learned in discussions with CSSD's complaint resolution team that because he missed the deadline to appeal the child support order, he could request relief from the CSSD director, which he did on December 12, 2013. Mr. C filed this appeal following the director's denial of the request on January 16, 2014.

### **III. Discussion**

#### *A. Introduction*

Mr. C is not challenging the income figures CSSD used to calculate his support obligation or the resulting monthly amounts. Rather, he is disputing the effective date of the arrears in this case, claiming that he did not know he had a child to support and that it is unjust

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<sup>7</sup> See Exh. 11 at pg. 6.

<sup>8</sup> *Id.*

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

and unfair to saddle him with over \$42,000 in arrears that accrued even before he was served with the notice of paternity and financial responsibility in April 2012. As the person who filed the appeal, Mr. C has the burden of proving his case by a preponderance of the evidence.<sup>10</sup>

The analysis of Mr. C's case at the formal hearing level is a two-step process, the first of which is to determine whether the obligor demonstrated sufficient grounds for relief from CSSD's administrative child support order. If that requirement is met, the second part of the analysis is to determine what relief is appropriate.

*B. Mr. C is Entitled to Relief*

CSSD has regulations under which a party may have a CSSD administrative order corrected. One is 15 AAC 125.125, which provides that a party to an administrative case may request relief from an agency administrative order after an appeal deadline for such reasons as, among other things, mistake, excusable neglect, newly discovered evidence, or fraud.<sup>11</sup> The request is to be made in writing to the director and must state the specific grounds for relief.<sup>12</sup> If the director grants the request for relief, the agency will issue an amended administrative child support and medical support order and adjust the party's account accordingly.<sup>13</sup> If the director denies the request for relief, the party may file an appeal and request a formal hearing.<sup>14</sup>

Mr. C established, through his testimony and that of his mother, M N, that he has a learning disability and cannot read above the second grade level. He credibly testified that when he received CSSD's child support order, he didn't really understand it. His wife, who typically helped him with reading comprehension, had gone to No Name in October 2012 and was not available to help him when he received the order on November 21, 2012.<sup>15</sup> He contacted CSSD and was informed that if he disagreed with the income numbers used to calculate his child support, that he could appeal the order. Since the calculations were based on his actual income, he believed he could not file an appeal and therefore did not request an administrative review under 15 AAC 125.118.

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<sup>10</sup> 2 AAC 64.290(e).

<sup>11</sup> 15 AAC 125.125(b).

<sup>12</sup> 15 AAC 125.125(a).

<sup>13</sup> 15 AAC 125.125(e).

<sup>14</sup> 15 AAC 125.125(f).

<sup>15</sup> Exh. 9 at pg. 20.

CSSD subsequently issued an Amended Administrative Child and Medical Support Order on March 20, 2013,<sup>16</sup> apparently to correct the arrears computation in the initial child support order.<sup>17</sup> At that point, Mr. C would have been entitled to file an appeal of the amended order and request a formal hearing before the Office of Administrative Hearings (OAH) under AS 25.27.170. Again, however, Mr. C did not file an appeal due to an incorrect belief that he was not entitled to appeal because the actual child support calculations were accurate.

Based on the evidence as a whole, Mr. C's failure to file an appeal of CSSD's orders because he did not have the reading ability to comprehend them constitutes excusable neglect.<sup>18</sup> Therefore, Mr. C met his burden of proving that he is entitled to relief from CSSD's Amended Administrative Child and Medical Support Order.

*C. Mr. C is Entitled to a Good Cause Variance*

A parent is obligated both by statute and at common law to support his or her children.<sup>19</sup> In general, this obligation begins when the child is born.<sup>20</sup> However, in administrative child support cases initiated by CSSD, the agency's regulations require that support be collected from the date the custodial parent requested child support services, or the date public assistance or Medicaid benefits were initiated on behalf of the child.<sup>21</sup> In this case, Ms. T applied, and U became eligible, for Medicaid benefits in April 2010.<sup>22</sup> This is the month CSSD began charging Mr. C with support for U.<sup>23</sup>

Child support determinations calculated under Civil Rule 90.3 are presumed to be correct. The parent may obtain a reduction in the support amount, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied." The existence of "unusual circumstances" may also provide a sufficient basis for a

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<sup>16</sup> Exh. 11.

<sup>17</sup> See Exh. 10.

<sup>18</sup> CSSD's misinformation also played a part in Mr. C's failure to pursue his appeal options, but since he established he is entitled to relief based on excusable neglect, CSSD's actions are moot.

<sup>19</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>20</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

<sup>21</sup> 15 AAC 125.105(a)(1)-(2).

<sup>22</sup> Exh. 11 at pg. 6.

<sup>23</sup> As discussed in Section II, above, it appears that public assistance benefits were paid on U's behalf in 2004. However, CSSD closed its case after Ms. T did not provide information about the identity of her child's father. By the time she listed a putative father and CSSD was able to establish a case against Mr. C in 2012, too much time had elapsed under AS 09.10.120(a) for CSSD to recoup those past benefits, and, it should be noted, child support for U for the intervening eight years.

finding of good cause to vary the calculated child support amount. It is appropriate to consider all relevant evidence to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).

CSSD's Pre-hearing Brief contains the records of its attempts to establish a child support case on U's behalf as early as April 2004. These records show that Ms. T either did not respond to CSSD and the DPA, or she told them that she did not know the identity of U's father. In fact, she misrepresented their two-week long relationship, characterizing it as a "one night stand at a party." Ms. T's misrepresentation kept Mr. C's identity from CSSD until January 2012, when she finally provided his name to CSSD. As a result, the state was not able to establish a child support case for Mr. C and recoup from him public assistance benefits paid on U's behalf as early as April 2004.

Ms. T's misrepresentation also deprived Mr. C of the knowledge that he had fathered a child. Mr. C credibly testified that he did not know Ms. T got pregnant as a result of their two weeks together in 2001, and that he did not know they had a child together. By the time the obligor was served with the paternity complaint in April 2012, U was nearly ten years old. Ms. T did not participate in the hearing, so the record in this appeal does not contain testimony or any other evidence from her.<sup>24</sup>

The financial impact on Mr. C must also be considered. After receiving a child support order with arrears in excess of \$42,000, the obligor and his wife, S, had to sell their home to pay at least a portion of his arrears. S went to No Name with their children to be with her mother. Under direct questioning at the hearing, Mr. C acknowledged he and S had separated. It is not known whether they will be able to reconcile. In addition to his marital difficulties, Mr. C's arrears keep going up even though he is making regular payments. This is because the monthly interest payment is so high that he is not making any headway on the monthly child support amount. His job is seasonal, so the child support garnishments from his unemployment benefits leave him little money with which to send support to his current family and to help with expenses at his mother's home.

CSSD stated at the initial hearing that the agency is not opposed to a variance in this case, but that if a variance is granted, Mr. C should be liable for support for U no later than April

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<sup>24</sup> The hearing notice was sent to the parties by certified mail on March 6, 2014. Ms. T received and signed for her notice on March 11, 2014. The first hearing in this matter was held on March 21, 2014.

2012, the month he was served with the paternity complaint. CSSD's position is reasonable. It strikes a balance between the parties' competing interests – Ms. T would lose the arrears owed to her beginning in April 2010, when Medicaid benefits began to be paid, but Mr. C would remain liable for child support arrears from April 2012 forward, the month he was served with the paternity complaint.

Thus, based on the evidence in its entirety, Mr. C has proven by clear and convincing evidence that manifest injustice would result if the child support calculated under Civil Rule 90.3 were not varied. Because Ms. T withheld his name from CSSD and DPA, Mr. C's child support obligation for U could not be established until 2012, a period of nearly eight years after CSSD first opened a case on U's behalf. The custodian's actions prevented Mr. C from the knowledge that he had a child until U was nearly ten years old and the obligor's child support arrears had exceeded \$42,000. Not only was he deprived of knowing U, but he is facing accrued arrears for which he has little hope of ever making a significant reduction.

Mr. C has shown good cause for an adjustment of his support obligation under Civil Rule 90.3(c). Mr. C was served with a paternity complaint in April 2012. It would be manifestly unjust to charge him arrears prior to that time. His obligation to pay support for U should begin in April 2012.

#### **IV. Conclusion**

Mr. C met his burden of proving by a preponderance of the evidence that he is entitled to relief from CSSD's administrative order under 15 AAC 125.125 based on excusable neglect. Further, because Ms. T failed to provide Mr. C's name to CSSD for a period of approximately eight years, and his arrears were in excess of \$42,000 when he was served with the paternity complaint, Mr. C proved by clear and convincing evidence that manifest injustice would result from a failure to vary his child support obligation for U. Mr. C's arrears should commence in April 2012, in the child support amounts calculated by CSSD in its amended order. The amended order should therefore be affirmed, with an effective date of April 2012.

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

1. Mr. C's request for relief from CSSD's administrative order is granted;
2. CSSD's Amended Administrative Child and Medical Support Order issued on March 20, 2013 is affirmed, with an effective date of April 1, 2012;
3. The arrears prior to April 2012 are vacated;

4. Mr. C is liable for the monthly child support amounts calculated by CSSD and set forth in the amended order for the time periods as of April 1, 2012.

DATED this 18<sup>th</sup> day of June, 2014.

Signed  
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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 7<sup>th</sup> day of July, 2014.

By: Signed  
\_\_\_\_\_  
Signature  
Rebecca L. Pauli  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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