

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

In the Matter of:)	
)	OAH No. 14-0451-CSS
D W. C)	CSSD No. 001192230
_____)	

DECISION AND ORDER

I. Introduction

The obligor, D W. C, appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on February 25, 2014. The obligee child is J, 3 years old. The other party is B M. G.

The hearing was held on April 21, 2014. Both parties participated by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child and Medical Support Order dated February 25, 2014 is affirmed. Mr. C's child support for J is set at \$622 per month from June 2013 through December 2013, and \$633 per month from January 2014 to the present, and ongoing. Also, Mr. C is entitled to a credit for direct payments made to Ms. G in the amount of \$3,920 for the period from June 2013 through December 2013. However, Mr. C's requests for child support credit prior to June 2013, and for making the payments on Ms. G's Toyota Tundra pickup, are denied.

II. Facts

A. Procedural History

CSSD received a transmittal from Ms. G's state of residence on June 6, 2013.¹ CSSD initiated a child support action against Mr. C by issuing an Administrative Child Support and Medical Support Order, which was served on Mr. C on December 12, 2013.² He requested an administrative review and provided income information.³ On February 25, 2014, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. C's ongoing child support at \$633 per month, with arrears of \$1,700 going back to June 2013. That order included

¹ Exh. 1.
² Exhs. 2-3.
³ Exh. 4.

credit for payments made directly to Ms. G in the amount of \$3,920.⁴ Mr. C appealed on March 20, 2014, asserting, apparently, that there was an issue with medical insurance coverage.⁵

B. Material Facts

Mr. C and Ms. G are the parents of J, who lives full-time with Ms. G. While the parties were still together, Ms. G was driving a Toyota Tundra that was actually owned by her father. Mr. C was driving a Dodge pickup. In 2011, Ms. G's father and Mr. C traded vehicle titles. Mr. G took possession of the Dodge pickup and Mr. C got the title to the Tundra, although Ms. G kept driving it. When she and Ms. G split up, Mr. C paid off the loan on the Toyota Tundra.

CSSD calculated Mr. C's child support obligation for J at \$622 per month for June through December of 2013, and \$633 per month for 2014 and ongoing.⁶ These calculations were based on Mr. C's total 2013 earnings as reflected on his December 30, 2013 paystub.⁷ During the hearing, Mr. C accepted CSSD's calculations of his child support obligation for 2013 and 2014.

Mr. C has made child support payments directly to Ms. G through direct deposit. These payments, all of which total \$3,920, are reflected in receipts he submitted prior to CSSD's administrative review.⁸ CSSD credited Mr. C with these payments in its summary sheet of his support obligation that was included with the amended order issued on February 25, 2014.⁹ Since then, Mr. C has also submitted payments through CSSD,¹⁰ which have already been credited to him by the agency and need not be addressed in this decision.

III. Discussion

As the person who filed the appeal, Mr. C, has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order support order is incorrect.¹¹

A. The support obligation in this case is effective June 2013

A parent is obligated both by statute and at common law to support his or her children.¹² In cases established by CSSD, the agency collects support from the date the custodial parent

⁴ Exh. 5.
⁵ Exh. 6.
⁶ See Exh. 5 at pgs. 9-11.
⁷ See Exh. 4 at pg. 2.
⁸ Exh. 4 at pgs. 3-7.
⁹ Exh. 5 at pg. 9.
¹⁰ Exh. 9.
¹¹ 15 AAC 05.030(h).

requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.¹³ In this case, Ms. G applied for CSSD's services in her state of residence on June 6, 2013.¹⁴ Therefore, that is the month during which Mr. C's obligation to support J through CSSD should begin.

B. CSSD correctly calculated Mr. C's child support

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." Mr. C provided his year-to-date paystub dated December 30, 2013, which CSSD used to calculate his child support at \$622 per month for 2013 and \$633 per month for 2014. Mr. C accepted these amounts, so there is no dispute as to the calculations.

C. Direct credits

Mr. C's primary issue on appeal¹⁵ is that he has to pay arrears in this case back to June 2013. He claims that in addition to the \$3,920 in credits he will receive for the period from June 2013 through December 2013, that he should be credited with direct child support payments because he paid off the Toyota Tundra.¹⁶ Also, he submitted additional cash receipts dated in 2012 and early 2013 (ending in April 2013) on the day of the hearing.¹⁷

CSED 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.¹⁸ An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments and that both parties intended the payment to be a direct payment of child support.¹⁹

There is no dispute that Mr. C made cash payments to Ms. G from June 2013 through December 2013 in the amount of \$3,920, and that Mr. C is entitled to credit for those payments. However, Mr. C is not entitled to credit for the cash payments he made prior to June 2013,

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ 15 AAC 125.105(a)(1)-(2).

¹⁴ Exh. 1 at pg. 5.

¹⁵ To the extent that Mr. C's appeal made reference to health insurance coverage for J, that issue will be handled separately by the parties' CSSD caseworker.

¹⁶ Ms. G also appears to have referenced those payments in the child support transmittal from her state. She indicated Mr. C made payments from July 2011 through June 2013. Exh. 1 at pg. 12.

¹⁷ Obligor's Exh. A at pgs. 3-9.

¹⁸ AS 25.27.020(b).

¹⁹ 15 AAC 125.465(a).

because they were made “before the first date support is due in the administrative child support action.” CSSD cannot credit an obligor with payments made before the date the agency begins charging a parent for support because there is no support obligation in place during any given month against which to credit the payments.

Neither is Mr. C entitled to a credit against his support obligation for paying off the Toyota Tundra, for two reasons. First, he apparently paid off the truck as early as 2011, but it was definitely before June 2013, so his payments on the Tundra preceded his child support obligation in this case, and, as with the 2012 cash receipts he submitted, there was no child support obligation in place against which to credit those payments. The second reason Mr. C is not entitled to a credit for the truck payments is that CSSD’s regulation requires that both parties intend the payment to be for child support. That is not the case here – Ms. G testified that she did not agree to a credit for the Tundra payments. An agreement both parties signed might have satisfied the intent requirement of the regulation, but again, the payments occurred before the support obligation was established, so as a result, Mr. C still would not be entitled to a credit for paying off the Tundra.

IV. Conclusion

Mr. C did not meet his burden of proving by a preponderance of the evidence that CSSD’s Amended Administrative Child Support and Medical Support Order was incorrect. Mr. C agreed to the monthly amounts CSSD calculated, so they should be adopted. Also, Mr. C is entitled to a credit of \$3,920 for direct payments made to Ms. G from June 2013 through December 2013. He is not entitled to a direct credit for payments he made prior to June 2013, nor for the payments he made on the Toyota Tundra. CSSD’s order should be affirmed.

There has been no variance requested or granted under Civil Rule 90.3(c).

V. Child Support Order

- The Amended Administrative Child Support and Medical Support Order dated February 25, 2014, is affirmed;

- Mr. C is entitled to a credit totaling \$3,920 for direct payments he made to Ms. G for the period from June 2013 through December 2013.

DATED this 20th day of May, 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 6th day of June, 2014.

By:

Signed

Signature

Christopher Kennedy

Name

Administrative Law Judge

Title

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