

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

In the Matter of:)	
)	OAH No. 14-0738-CSS
O F. B)	CSSD No. 001196328
_____)	

DECISION AND ORDER

I. Introduction

This case involves O F. B's appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on April 4, 2014. The obligee children are L, 3 years old, and A, 1 year old. The custodian is F N. B.

The hearing was held on June 3, 2014; the record closed on June 27, 2014. Both parties participated by telephone and Mr. B was represented by attorney Orville W. Layton. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. B's child support is set at \$1,327 per month for two children from December 2013 through April 2014; and \$1,069 per month for two children (\$792 for one child), effective May 1, 2014, and ongoing.

II. Facts

A. Procedural Background

Ms. B applied for child support for L and A on December 3, 2013.¹ CSSD initiated a child support action for Mr. B and subsequently issued an Amended Administrative Child and Medical Support Order on April 4, 2014 that set his ongoing child support at \$1,019 per month for two children (\$755 for one child), with arrears of \$1,327 for the period from December 2013 through April 30, 2014.² Mr. B filed an appeal and requested a formal hearing. He stated that CSSD incorrectly calculated his support obligation because his income has gone down since [Ms. B] and the children moved to Kentucky.³

¹ Exhs. 1.
² Exh. 6.
³ Exh. 7.

*B. Material Facts*⁴

Mr. B is a Human Resource Specialist in the military. He is an E4 with 6 years of service.⁵ When this case was initiated, and up until mid-April 2014, Ms. B and the children, L and A, were living in housing paid for from Mr. B's housing allowance (BAH) of \$1,698 per month.⁶ Ms. B was not employed, so Mr. B also paid for food and other bills. He spent approximately \$3,000 per month to support the family.⁷

Ms. B and the children moved to Kentucky on April 12, 2014.⁸ During April 2014, the value of the housing Mr. B provided to the children for the first 12 days of the month equals \$679.20.⁹ In addition to housing, Mr. B transferred \$300 to Ms. B's bank account on April 16 and April 26.¹⁰ These two transfers equal \$600. When the housing and cash transfers are added together, it equals \$1,279.20 in direct support that Mr. B provided to the children for the month of April 2014. Subtracting that amount from the \$1,327 child support obligation for April, results in a balance of \$47.80 for the month of April 2014.¹¹

Mr. B also paid direct support in May 2014 in the form of one \$300 bank transfer.

When Ms. B and the children moved out of state, Mr. B's BAH and COLA benefits were reduced. Mr. B requested updated pay and benefits information from the military, which responded after the hearing. According to the Defense Military Pay Office (DMPO) on Joint Base No Name, (JBNN), Mr. B will receive:

Base Pay in the amount of \$2427.30, entitlements for Base Housing Allowance (BAH) in the amount of \$956.70, Basic Allowance for Subsistence (BAS) \$357.55 and Cost of Living Allowance in the amount of \$552.50. . . .^[12]

After the hearing, CSSD used this information to prepare a revised child support

⁴ The material facts are taken from the parties' hearing testimony or the documentary evidence, unless otherwise cited.

⁵ Mr. B's May 2014 Leave and Earnings Statement (LES), received June 13, 2014.

⁶ Exh. 6, pg. 7.

⁷ *Id.*

⁸ Ms. B's testimony.

⁹ $\$1,698 \div 30 \text{ days in April} = \$56.60 \text{ per day} \times 12 \text{ days} = \$679.20.$

¹⁰ *Id.*

¹¹ Mr. B also transferred \$300 to Ms. B's account on May 1, 2014. He is entitled to a direct payment credit in that amount for the month of May 2014.

¹² Exh. 10, pg. 3.

calculation for 2014, effective May 1, 2014. The result is a support amount of \$1,069 per month for two children (\$792 for one child).

III. Discussion

Mr. B filed the appeal in this matter. As the party who filed the appeal, he has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order is incorrect.¹³

A parent is obligated both by statute and at common law to support his or her children.¹⁴ By regulation, CSSD 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(ren).¹⁵ In this case, Ms. B requested child support services in December 2013, so that is the first month in which he is obligated to pay support in this administrative child support action.¹⁶

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," minus mandatory deductions such as taxes and Social Security. Civil Rule 90.3 specifically provides that a military parent's total income from all sources includes "Armed Service Members base pay plus the Obligor's allowances for quarters, rations, COLA and specialty pay."¹⁷

The first Administrative Child and Medical Support Order set Mr. B's child support calculation at \$1,377 per month, which CSSD reduced to \$1,327 per month in the amended order.¹⁸ At the hearing, Mr. B stipulated to the latter calculation for the first five months of this obligation – from December 2013 through April 2014, so the calculation for those months is no longer an issue in this appeal. What remains to be determined is Mr. B's obligation for ongoing support for L and A beginning in May 2014.

After the hearing, Mr. B provided information from the military regarding his pay and benefits as of May 2014.¹⁹ These amounts reflect the lower BAH and COLA he will be receiving as a result of Ms. B's move to Kentucky with the children. CSSD used that

¹³ 15 AAC 05.030(h).

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ 15 AAC 125.105(a)(1)-(2).

¹⁶ See Exh. 1.

¹⁷ Civil Rule 90.3, Commentary III.A.29 (emphasis added).

¹⁸ See Exhs. 2 & 6.

¹⁹ Exh. 10, pg. 3.

information to calculate Mr. B's ongoing child support at \$1,069 per month for two children (\$792 for one child), effective May 2014.²⁰ This amount is a correct calculation of Mr. B's support obligation as of that month. It is based on his actual income information as reported by Mr. B's employer, and calculated under Civil Rule 90.3.

The final issue in this appeal concerns Mr. B's request for a credit for the direct support he provided to L and A in April and May 2014.

CSSD may give an obligor credit for direct payments made to the custodian in satisfaction of an immediate duty of support. The statute, AS 25.27.020(b), provides that the agency *shall* consider all payments made before the obligor parent is ordered to pay child support through CSSD.²¹ If the payments to the custodian are made *after* the obligor is ordered to pay support through CSSD, the parent must show "clear and convincing evidence of the payments."²²

CSSD's regulations add that the obligor also must show by clear and convincing evidence that both parties intended the payments to be for child support.²³ Evidence of direct payments may include copies of cancelled checks and money orders; bank statements or electronic transfers; receipts signed by the custodian; or a notarized statement by a party or a witness to the direct payments.

When a party requests credit for direct payments from CSSD, the agency will issue an administrative review decision either granting or denying the credit. A party aggrieved by CSSD's decision must appeal to the superior court – an administrative hearing before the OAH is not available on this issue.²⁴

CSSD is opposed to Mr. B being granted any credit in this administrative appeal after March 2014, citing 15 AAC 125.465(d). CSSD argues that the requirement for a party to appeal an administrative review decision to the court means that the OAH does not have the authority to grant or deny a credit requested in the formal hearing process.

²⁰ Exh. 10, pgs. 1-2.

²¹ AS 25.27.020(b).

²² *Id.*

²³ 15 AAC 125.465(a).

²⁴ 15 AAC 125.465(d).

CSSD's argument is incorrect. After the hearing, the administrative law judge is directed by statute to "adopt findings and a decision determining . . . the amount of periodic payments or sum for which the alleged obligor is found to be responsible . . ." ²⁵ Whether an obligor is entitled to the credits he or she seeks in an appeal is an integral part of that determination, and is a fundamental aspect of the administrative law judge's authority. CSSD's agency procedure for granting direct credits and the OAH formal hearing process are two different methods for granting an obligor parent direct credit for child support payments.

Contrary to CSSD's argument, the regulation does not *limit* the administrative law judge's authority to grant direct support credits during a hearing. Rather, the regulation merely recites the process that occurs when the request is made directly to the agency. In that situation, CSSD must issue an administrative review decision, and if a party objects to the decision, he or she must appeal to the court, not the OAH.

In this case, CSSD granted Mr. B a credit for direct payments he made to Ms. B through his BAH and cash – he essentially made the house payment and paid all the expenses, as the custodian was not working and had no means of support. CSSD granted the credit for the time period from December 2013 through March 2014. ²⁶ By the time this case got to the formal hearing level, Mr. B had also provided direct housing support through April 14, 2014, the day Ms. B and the children left for Kentucky, and he had also given her \$600 in cash in two electronic bank transfers after that. In May 2014, Mr. B gave Ms. B \$300 in cash through a bank transfer. Because CSSD's amended order and administrative review decision had already been issued, Mr. B's request for direct credits was appropriately presented in the formal hearing to be considered in this proposed child support decision. Were the OAH unable to address Mr. B's request for credit during the hearing process, he would have had to return to CSSD to request credit for the additional direct payments he made. This requirement would have been clumsy and time consuming, and it would not have been an efficient use of resources.

Finally, it makes little sense to question the direct credits for April and May 2014. Ms. B verified the payments at the hearing, and since all of the arrears are owed to her, Ms. B certainly would not have agreed to the credit had she not received the support.

²⁵ AS 25.27.180(a)(1).

²⁶ Exh. 6, pg. 9.

Therefore, Mr. B is entitled to a credit for direct support paid in April 2014 in the amount of \$1,279.20. Subtracting that amount from the \$1,327 child support obligation for April, results in a balance of \$47.80 for the month of April 2014.²⁷ Mr. B is also entitled to a credit for May 2014 in the amount of \$300.

IV. Conclusion

Mr. B proved by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). He is entitled to a credit for direct support payments made to Ms. B. CSSD determined the credits for December 2013 through March 2014, and this decision determined the credits for April 2014 and May 2014. They should be adopted.

The child support calculations for December 2013 through April 2014 were correctly set by CSSD at \$1,327 per month for two children. Mr. B's ongoing child support effective May 1, 2014 is now correctly calculated at \$1,069 per month for two children (\$792 per month for one child). These amounts should be adopted, without variation under Civil Rule 90.3(c).

V. Child Support Order

- Mr. B is liable for child support for L and A in the amount of \$1,327 per month for December 2013 through April 2014; and \$1,069 per month for two children (\$792 per month for one child), effective May 1, 2014, and ongoing.
- Mr. B is entitled to credit for direct child support payments made to Ms. B in the amount of \$1,327 per month for December 2013 through March 2014; \$1,279.20 for April 2014; and \$300 for May 2014.

²⁷ CSSD gave Mr. B credit for direct payments for each month from December 2013 through March 2014 in the amount of \$1,327 per month. This is the full support amount for each month, and it reflects the nearly \$3,000 he paid each month. The amount of the direct support credit for April 2014 does not reflect additional payments for food, utilities, etc. Although it seems obvious that Mr. B paid those extras and should get the full monthly credit, there is no evidence on that issue in the record, either the prehearing brief or the hearing recording. Thus, the credit for April 2014 was more specifically calculated.

- All other provisions of the Amended Administrative Child and Medical Support Order remain in full force and effect.

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.]