

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

In the Matter of: )

D J. P )

) OAH No. 14-1122-CSS

) CSSD No. 001190615

**DECISION AND ORDER**

**I. Introduction**

D J. P appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on November 20, 2013, and served on him on June 13, 2014. That order added two children and modified his ongoing child support amount for the three children, Z, Y and X. This is a foster care case, so the other party to the appeal is the State of Alaska.

The formal hearing was held on July 24, 2014. Mr. P participated by telephone. His attorney, Roy V. Williams, appeared in person. Robert Lewis, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, Mr. P's child support for Z, Y and X is modified to \$1,842 per month for three children (\$1,499 for two children; \$1,099 for one child), effective November 2013. In addition, Mr. P's support obligation for Z only is deferred from collection, effective November 2013.

**II. Facts**

Mr. P has three biological children, Z, 15; Y, 13; and X, 11. Y was placed in State custody in early 2013, and Mr. P's support obligation for her was set at \$860 per month, minus a \$15 medical credit, beginning in April 2013.<sup>1</sup>

According to the information submitted by CSSD, Z and X were placed in the custody of the Department of Health and Social Services (DHSS) in August 2013.<sup>2</sup> Z was subsequently placed in foster care on October 3, 2013, but he ran away two days later.<sup>3</sup> A letter from the No Name Office of Children's Services (OCS), a division of DHSS, states that since then, DHSS has been unable to locate Z. On May 14, 2014, OCS obtained a court order releasing Z from DHSS

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<sup>1</sup> Exh. 1 at pg. 9.

<sup>2</sup> Exh. 7 at pg. 8.

<sup>3</sup> Obligor's Exh. A-1.

custody and relieving the Department of all responsibility for him.<sup>4</sup> There has been no follow-up information regarding Y or X, so presumably, they remain in State custody.

Mr. P is employed on the North Slope by No Name, Inc. For 2013, CSSD estimated his annual income at \$102,407.56, which results in a child support calculation of \$1,842 per month for three children (\$1,499 for two children; \$1,099 for one child).<sup>5</sup> Mr. P did not challenge the actual figures, only his legal obligation to provide support.

### **III. Discussion**

As the person who filed the appeal, Mr. P has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order dated November 20, 2013 is incorrect.<sup>6</sup>

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. P did not challenge CSSD's calculation of his support obligation for Z, Y and X, so the child support amounts are not in controversy.

Mr. P's issue on appeal is that he is being obligated to pay support for Z, even though his son has not been in State custody since early October 2013.<sup>7</sup> Using CSSD's calculations, Mr. P is liable for support for Z in an amount totaling \$2,401 for the period from November 2013 through June 2014.<sup>8</sup> November 2013 is the first month after he ran away, and June 2014 is the first month after the court issued the order releasing Z from DHSS custody.<sup>9</sup>

CSSD regulation 15 AAC 125.870(d)-(e) directs the agency to defer a parent's support obligation during periods of time the child of an order is not actually in the custodian's physical custody. The regulation states:

(d) The agency will defer ongoing support accruing under an administrative support order of this state if

(1) the custodian of the child no longer maintains physical custody and an application for services from a third-party custodian has not been made; or

(2) the custodian of the child submits a written withdrawal from agency services.

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<sup>4</sup> Obligor's Exh. A-2.

<sup>5</sup> Exh. 7 at pg. 7.

<sup>6</sup> 15 AAC 05.030(h).

<sup>7</sup> Mr. P did not raise any issues regarding his support obligation for Y and X.

<sup>8</sup> The three child amount of \$1,842 minus the two child amount of \$1,499 = \$343 per month for one child. When multiplied times 7 months, the total is \$2,401 for that period of time.

<sup>9</sup> See Exh. A-2.

(e) If 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.<sup>[10]</sup>

It is not clear from the regulation what specific process an obligor parent must invoke to have his or her child support deferred by CSSD. This is not a common issue in hearings before the OAH, but there appears to be no reason Mr. P's child support obligation for Z cannot be deferred in this child support decision.<sup>11</sup> A more pressing issue for Mr. P is that in the event Z returns to State custody, or an application for child support services is received on his behalf, 15 AAC 125.870(e) requires that all of the arrears that accrued during the time of deferral will be reinstated. This seems to be a manifestly unjust result, but the language of the regulation is unambiguous on this point.

#### **IV. Conclusion**

Mr. P met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated November 20, 2013 is incorrect, as required by 15 AAC 05.030(h). CSSD correctly calculated Mr. P's child support obligation for Z, Y and X, but Mr. P established that Z has not been in State custody since early October 2013, so the obligor's child support obligation for Z should be deferred. When the deferment period under 15 AAC 125.870(d)-(e) expires, Mr. P's support obligation should be reinstated. There was no variation requested or granted under Civil Rule 90.3(c).

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

- Mr. P is liable for modified child support for Z, Y and X in the amount of \$1,842 per month for three children (\$1,499 for two children; \$1,099 for one child), effective November 2013;
- Mr. P is liable for additional arrears for Z and X of \$743 per month for August 2013 through October 2013;
- Mr. P's support obligation for Z only (\$343 per month) is deferred from collection for the period from November 2013 forward;
- Upon proof that Z is back in State custody, or CSSD receives an application for services from another custodian who is entitled to support for Z, Mr. P's child support should return to the amount of \$1,842 per month for three children;

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<sup>10</sup> 15 AAC 125.870(d)-(e).

<sup>11</sup> See AS 25.27.180(a).

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated November 20, 2013 remain in full force and effect.

DATED this 13th day of August, 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 16th day of September, 2014.

By: *Signed* \_\_\_\_\_  
Signature  
Angela M. Rodell  
Name  
Commissioner  
Title

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