

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

IN THE MATTER OF:)

S. D.)

) OAH No. 04-0057-CSS

) CSSD NO. 001126165

) DOR NO. 040529

DECISION AND ORDER

I. Introduction

This case involves the Obligor S. D.’ appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on July 23, 2004. The Obligee child is J., DOB 00/00/86.

The formal hearing was held on September 2, 2004. Mr. D. appeared in person; the Custodian, P. J. L., appeared telephonically. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on February 12, 2005.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. D.’ appeal should be granted; his child support should be calculated from his Social Security income, not his pre-retirement earnings, and as of January 2005, he is entitled to a credit for the Children’s Insurance Benefits (CIB) payments that J. receives.

II. Facts

A. History

On March 19, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. D.¹ He requested an administrative review on April 19, 2004.² Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on July 23, 2004, that set ongoing support at \$833 per month, with arrears of \$8305 for the period from September 2003 through July 2004.³ Mr. D. filed an appeal on October 10, 2004.⁴

At the formal hearing, Mr. D. testified he turned 65 years old on 00/00/04, and that he had retired. He said he was no longer earning income at the level he received when employed,

¹ Exh. 3.

² Exh. 4.

³ Exh. 9.

⁴ Exh. 10.

but he did not know how much Social Security he would receive until his documents arrived from the government. Mr. D. testified the Obligee J. also would be entitled to Children's Insurance Benefits (CIB), but he would not know the amount until Ms. L. informed him how much money J. had received.

Mr. D. also testified he filed for custody of J. in the court earlier in 2004, but the case did not go to a hearing until the day after J. turned 18 years of age. Mr. D. said the judge told him and Ms. L. that the judge could not award custody of J. to either parent because he was no longer a minor. Mr. D. said the judge also told them she could not set child support because an original child support order was not issued before J. turned 18 years old.

Mr. D. also said J. had previously lived with him and his fiancée during the 2002-2003 school year, then J. spent the summer of 2003 with Ms. L., after which time both mother and son moved to Alaska in August 2003. Mr. D. testified Ms. L. and J. lived in a cabin on his property for a few weeks before moving into his niece's home. Mr. D. said he gave Ms. L. \$150 per month for child support for September 2003 through November 2003, and after he produced the checks, CSSD credited the payments to him.

Ms. L. confirmed most of Mr. D.' testimony. She stated she and J. arrived in Alaska on August 11, 2003, and stayed in the cabin for two weeks, but Ms. L. said the property actually is owned by Mr. D.' fiancée, not Mr. D.. Ms. L. said she then moved to Mr. D.' niece's home and performed some night duty home health care for her. Ms. L. then said on January 1, 2004, she and J. moved into housing provided by the Alaska State Housing Authority (ASHA). Ms. L. said she informed public assistance officials that she was doing night duty work at the time.

Ms. L. said she attended the court hearing regarding J.'s custody. She confirmed the court would not award either custody or support and added the judge did not write an order, she merely ruled from the bench that the action for custody was moot because of J.'s age. Ms. L. said J. was still in school and hoped to graduate in two years. Ms. L. said he still lives with her, and she provided a letter J. wrote on August 27, 2004, that says he still lives with his mother.⁵

After the hearing, both parties were directed to file additional documents regarding both Mr. D.' and J.'s Social Security benefits. Mr. D. also was directed to file a copy of the tape from his court hearing regarding custody.

⁵ Exh. 11.

CSSD subsequently filed a Post-Hearing Brief that stated Mr. D. had filed a copy of the tape of the hearing and the clerk's log notes.⁶ CSSD also verified Mr. D.' income for 2003 and 2004 and prepared revised calculations for both years. The 2003 calculation was revised to \$732 per month based on Mr. D.' actual income of \$57,363.78, plus the PFD, minus his deductions for union dues.⁷ CSSD revised the 2004 calculation to \$403 per month, based on Mr. D.' total income of \$28,938.94, which includes his earned wages through the date he retired, plus the PFD, unemployment benefits, and his Social Security payments.⁸

On February 12, 2005, CSSD filed a copy of Mr. D.' Social Security statement that indicates he will receive \$941.50 per month, minus medical insurance premiums of \$78.20, which results in a regular monthly payment of \$863 per month.⁹ On February 12, 2005, CSSD filed a copy of J.'s Social Security statement that indicates he will receive \$470 per month beginning in January 2005.¹⁰ From these statements, CSSD determined Mr. D.' 2005 income from all sources would total \$12,217.84, which results in a child support amount of \$275 per month.¹¹ CSSD subtracted J.'s \$470 per month payment, which results in Mr. D. not being liable for any additional child support as of January 1, 2005.¹²

B. Findings

Based on the evidence in the record and after due consideration, I hereby find:

1. As required by 15 AAC 05.030(h), Mr. D. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect;
2. Mr. D. turned 65 years of age on 00/00/04, and retired as of September 2004;
3. Mr. D.' retirement benefit is \$941.50 per month, minus the cost of insurance premiums of \$78.20 per month, for net retirement income of \$863 per month;
4. Mr. D.' total income from all sources was \$58,471.34 in 2003;
5. Mr. D.' total income from all sources was \$28,938.94 in 2004;
6. Mr. D.' estimated annual income from all sources is \$12,217.84 for 2005;

⁶ Exh. B & Exh. 16.

⁷ Exh. 18.

⁸ Exh. 19.

⁹ Exh. 21.

¹⁰ Exh. 23.

¹¹ The CIB payments are considered income to the Obligor parent under 15 AAC 125.030(b)(2).

¹² Exh. 22.

7. CSSD correctly calculated Mr. D.' child support at \$732 per month for 2003, \$403 per month for 2004 and \$275 per month for 2005;
8. Ms. L. began receiving public assistance on J.'s behalf in September 2003;
9. Mr. D. paid child support directly to Ms. L. in the amount of \$150 per month for the three months of September 2003 through November 2003;
10. J. receives Social Security payments of \$470 per month;
11. J.'s CIB payment satisfies Mr. D.' child support obligation as of January 2005;
12. J. will turn 19 years of age on 00/00/05;
13. J. was living with Ms. L. at the time of the hearing in this case;
14. Mr. D. is obligated to pay child support for J. through May 2005.

III. Discussion

A. Mr. D.' Income

A parent is obligated both by statute and at common law to support his or her children.¹³ 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." CSSD verified Mr. D.' actual annual income for the years 2003 and 2004, and estimated his 2005 income from Social Security and the PFD. These figures are correct and should be used in Mr. D.' child support calculations for each year.

B. J.'s CIB Payment

Children's Insurance Benefits are those payments made to a child based on a parent's past Social Security contributions.¹⁴ An Obligor parent is entitled to receive a credit against his or her child support obligation for CIB payments made to their child.¹⁵ Pursuant to CSSD's regulations, the CIB credit is determined in a two-step process. First, the annual CIB amount is added to the Obligor parent's total annual income, from which a child support amount is calculated.¹⁶ Second, the monthly CIB payment is subtracted from the child support calculation. If the CIB payment exceeds the amount of support due for that month, the balance of the payment is applied to the Obligor parent's arrears for time periods that do not involve public assistance.¹⁷

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ 42 USC 402(d).

¹⁵ *Miller v. Miller*, 890 P.2d 574, 577 (Alaska 1995).

¹⁶ 15 AAC 125.030(b)(2).

¹⁷ 15 AAC 125.475(b)(1)(B).

As directed, both Mr. D. and Ms. L. supplied CSSD with documents after the formal hearing that verify J. would start receiving CIB payments in the amount of \$470 per month as of January 2005. CSSD applied that figure to Mr. D.' 2005 support amount of \$275 per month and determined since the CIB payment is higher than the support amount, it will satisfy Mr. D.' support obligation as of January 2005. These calculations are correct and should be adopted.

B. Direct Payment Credit

Mr. D. testified he gave Ms. L. \$150 per month for support for the months of September 2003 through November 2003, and he supplied copies of the checks. CSSD accepted these payments, as stated at the hearing, but it is not known if CSSD has already credited Mr. D. with the payments. Therefore, the credit will be specified in the child support order at the end of this decision. In the event CSSD has already entered the credit in Mr. D.' account, the agency should not credit him twice.

C. Custody

The court hearing on Mr. D.' petition for custody was held on May 28, 2004, the day after J. turned 18 years of age.¹⁸ The judge informed the parties she could not award custody to either party because J. was over 18 years of age, and no longer a minor. The court also informed Mr. D. and Ms. L. that child support could not be granted because a support order had to have been issued prior to J.'s 18th birthday, and also because J. had to live with one parent or the other in order to receive child support through his 19th birthday. J. was in the courtroom that day and told the judge he did not want to commit to living with either parent – he just wanted to get out on his own. As a result, the judge did not issue any order, she merely ruled from the bench that Mr. D.' petition for custody was moot.¹⁹

In the administrative context, however, there is no bar to child support being enforced in this case. Ms. L. began receiving public assistance benefits in September 2003, when J. was 17 years old. Mr. D. is obligated to pay child support as reimbursement to the state for providing for J. during that time.²⁰ CSSD issued the Administrative Child Support and Medical Support Order on March 19, 2004, also before J.'s 18th birthday, so there was a child support order in effect when J. turned 18. The judge obviously didn't know about the administrative action for child support, because if she had, she most likely would have referred the child support matter back to CSSD. But the court did not say Mr. D. was not liable for support. The judge merely

¹⁸ Tape of hearing in Superior Court Case No. 3PA-00-000 Civ.

¹⁹ *Id.*

²⁰ AS 25.27.120(a).

said she could not issue an order because of J.'s age. Thus, CSSD is not precluded from establishing and enforcing Mr. D.' child support obligation for J.

Child support may be ordered for an unmarried child until his or her 19th birthday, so long as the child is still in high school or pursuing a similar educational goal, and the child lives as a dependent in the home with the custodial parent.²¹ Mr. D. claims J. said at the court hearing that he did not want to live with either parent, so Mr. D. should not be liable for support after J.'s 18th birthday. However, J. submitted a letter on August 27, 2004 that says he was still living with his mother.²² Thus, Mr. D. is still liable for J.'s support until the child turns 19 years of age. Because J.'s CIB payment began in January 2005, for practical purposes, Mr. D. does not have any additional child support payments after December 2004 other than any arrears that might have accrued prior to January 2005.

IV. Conclusion

Mr. D. met his burden of proving by a preponderance of the evidence that he would not be earning his prior wage after he retired and that his child support for 2005 forward should be calculated just from his retirement earnings. CSSD correctly revised Mr. D.' support amount for 2003 and 2004. Mr. D. remains liable for support until May 2005, but with J.'s CIB payment beginning in January 2005, Mr. D. will not have to pay any additional funds for support after that, except he will have to pay all of his arrears for periods of time prior to January 2005.

V. Child Support Order

Accordingly, I issue the following child support order:

1. Mr. D. is liable for child support in the amount of \$732 per month for September 2003 through December 2003;
2. Mr. D. is liable for child support of \$403 per month for 2004;
3. Mr. D. is liable for child support of \$275 per month effective January 2005;
4. Effective January 2005, Mr. D. is entitled to a credit of \$470 per month against his child support for J.'s CIB payment;

²¹ AS 25.27.061.

²² Exh. 11.

5. Mr. D. is entitled to a direct payment credit of \$150 per month for September 2003 through November 2003.

DATED this 2nd day of May, 2005.

By: 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. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of S. D. be adopted as of this date and entered in his file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 2nd day of May, 2005.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

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