

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

IN THE MATTER OF:)	
)	OAH No. 04-0068-CSS
W. H. S.)	CSSD NO. 001029847
_____)	DOR NO. 040574

DECISION AND ORDER

I. Introduction

This case involves the Obligor W. H. S.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 4, 2004. The Obligee children are A., B., C. and D.

The formal hearing was held on October 5, 2004. Both Mr. S. and the Custodian, M. M., appeared telephonically from their home. David Peltier, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on November 19, 2004.

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. S.'s appeal should be granted; he should not be liable for support for the periods of time he lived with one or more of the Obligees.

II. Facts

A. History

Ms. M. applied for services in a public assistance application dated July 6, 1993.¹ CSSD notified Mr. S. that A. and B. were receiving public assistance benefits on July 31, 1993.² Mr. S. provided financial information on January 5, 1995.³ Between February 8, 1995 and April 25, 2002, CSSD made nine attempts to serve Mr. S. with a child support order; the first attempt was refused, and all the subsequent attempts were unclaimed.⁴ CSSD served Ms. M. with an

¹ Exh. 1 at pg. 7.

² Exh. 2.

³ Exh. 3.

⁴ Exhs. 4-13. In 1995, the child support order was titled Notice and Finding of Financial Responsibility; this was later changed to Administrative Child Support and Medical Support Order.

Administrative Child Support and Medical Support Order on April 25, 2002.⁵ The record does not indicate whether Mr. S. was ever served with a child support order, but he requested an administrative review on May 6, 2004.⁶ After the review, CSSD issued an Amended Administrative Child and Medical Support Order on August 4, 2004, that set ongoing support at \$1024 per month, with arrears of \$43,802 for the period from April 1998 through August 2004.⁷ Mr. S. filed an appeal on August 20, 2004.⁸

At the formal hearing, Mr. S. stated he should not be liable for support because he has never really been separated from the family. He explained the current child support order arises out of a series of events that occurred on May 30, 1995, when he was falsely accused of molesting his step-daughter. Mr. S. said DFYS took custody of the child, and he was ordered out of the home. He said criminal charges were never filed against him, but his name and good reputation were forever damaged, so he sued the responsible parties. Mr. S. said it took over three years for him to be exonerated in civil court with an award of over \$900,000 in damages, but he has never received any of the money awarded to him.

Mr. S. said both before and after the events that occurred in May 1995, he and his wife, who is the Custodian of record, M. M., worked in various locations around Alaska, including their home village of No Name City City, and Dillingham, Bethel and Anchorage. He said his wife works in a mine intermittently, and she is out of the home for long periods, at which time he takes care of the children. Mr. S. said there have also been periods when he had the children in Anchorage, and both he and Ms. M. have taken turns working at remote locations.

Mr. S. said after he was ordered out of the home in 1995, neither he nor Ms. M. actually followed the order. He said he worked as a pilot and flight instructor in Anchorage, but he commuted back and forth from there to No Name City and took supplies to his family.

Mr. S. further testified he has had many jobs over the years, most notably as a teacher and flight instructor. He said he was working as a teacher when the allegations against him were made in 1995, so he had to leave the profession and never worked as a teacher again. At the time of the hearing, Mr. S. said he had retired and had been living with Ms. M. in their home in No Name City since 2002.

⁵ Exh. 13.

⁶ Exh. 15.

⁷ Exh. 17.

⁸ Exh. 18.

Ms. M. also presented testimony at the hearing. She said she considered herself and Mr. S. to be together when he was accused of molesting her daughter, but Ms. M. added they were apart occasionally because of their work.

Ms. M. said she did not remember where Mr. S. was living and working at any specific time because it was a long time ago and they have been in many places over the years. Ms. M. stated Mr. S. may have been in either No Name City or Anchorage in 1996, and that she herself “may have been in Anchorage by that time.” When asked when Mr. S. was permanently back in the home, Ms. M. replied that it could have been 1997, 1999 or 2000. She said they kept in contact and would talk on the phone 1-2 times per week when they were apart.

At the close of testimony, Mr. S. was directed to provide copies of the judgment he received in the molestation lawsuit, and copies of the school records that establish he was in the home with the children in Anchorage after the events of May 1995. He filed the documents with CSSD on October 29, 2004.

CSSD subsequently filed a Post-Hearing Brief. The agency explained it would be charging Mr. S. child support only for the time period from May 1998 through March 1999, when public assistance benefits were paid, and from April 1999 through August 1999, because the school records indicate Mr. S. was a custodial parent as of September 1999.⁹ CSSD said Ms. M. has indicated she wants to withdraw from child support services, but she had not yet submitted a written withdrawal form to CSSD. CSSD stated if Ms. M. does submit a written form withdrawing from services, CSSD would suspend collection of the arrears from April 1999 through August 1999, because those funds are owed to her.

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. S. 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. Ms. M. received public assistance benefits for two children, A. and B., from May 1998 through March 1999;
3. Mr. S. was living in the home with A. and B. as of September 1999;
4. Ongoing child support should be suspended as of September 1999;

⁹ Exh. 20 at pgs. 1-4.

5. Mr. S. did not contest CSSD's calculations;
6. CSSD correctly calculated Mr. S.'s child support obligation at \$256 per month for 1998 and \$261 per month for 1999.

III. Analysis

A parent is obligated both by statute and at common law to support his or her children.¹⁰ This obligation begins when the child is born.¹¹ 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), up to six years prior to service on the Obligor parent of notice of the action.¹²

The primary issue in this appeal is whether Mr. S. lived in the home with Ms. M. and A. and B. during any of the time for which he is being charged child support. At the formal hearing, Mr. S. testified, and Ms. M. confirmed, that they both lived in several places over the years, as required by their various jobs, but even so, they considered themselves to be together, and Mr. S. often supported the family from afar. Because Ms. M. confirmed much of Mr. S.'s testimony, or could not remember where he was working during specific time periods, CSSD limited its request for child support for the period from May 1998 through March 1999 in order to reimburse the state for public assistance benefits Ms. M. received for A. and B.

Mr. S. testified, and school records confirm, that Mr. S. was in the home with A. and B. as of September 1999, so CSSD has suspended Mr. S.'s support obligation as of that month. Arrears for the period from April 1999 through August 1999 are owed to Ms. M., and apparently she has told CSSD she wants to withdraw from services, but had not done so in writing as of the date CSSD submitted the Post-hearing Brief. CSSD stated that as soon as she submits a written withdrawal, CSSD will suspend those additional months. In the event the parties separate and Mr. S. once again becomes liable for paying support for any of the children, his ongoing child support may need to be modified in order to determine what his ability to pay would be at the time. CSSD prepared a 2004 child support calculation, but it was based on annual income of \$40,000 that he no longer earns.¹³

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹² 15 AAC 125.105(a)(1)-(2).

¹³ See Exh. 17 at pg. 18.

IV. Conclusion

Mr. S. met his burden of proving by a preponderance of the evidence that he lived with Ms. M. and A. and B. as of September 1999. For the time period before that, CSSD is requesting Mr. S. be charged child support only from May 1998 through March 1999, for public assistance reimbursement, and from April 1999 through August 1999, but those arrears are owed to Ms. M. CSSD stated it will suspend those arrears when Ms. M. withdraws from CSSD's services in writing.

V. Child Support Order

1. Mr. S. is liable for child support in the amount of \$256 per month for May 1998 through December 1998; and \$261 per month for January 1999 through August 1999, and ongoing;
2. Ongoing child support is suspended as of September 1999, and shall remain suspended so long as Mr. S. lives with A. and B.

DATED this 10th 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 W. H. S. 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 10th 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.]