

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

IN THE MATTER OF:)

C. A. E.)

) OAH No. 04-0121-CSS
) CSSD NO. 001116118
) DOR NO. 040707

DECISION AND ORDER

I. Introduction

This case involves the Obligor C. A. E.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 16, 2004. The Obligee child is R., DOB 00/00/2001.

The formal hearing was held on December 2, 2004. Mr. E. appeared in person; the Custodian of record, E.M. P., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on December 17, 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. E.'s appeal should be granted. His child support should be calculated from his actual income minus mandatory deductions that include his retirement and support payments for a prior child. In addition, Mr. E.'s ongoing child support should be suspended as of March 2003 because R. has been in his custody since then.

II. Facts

A. History

On July 20, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. E.¹ He requested an administrative review on August 11, 2004.² Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on September 16, 2004, that set ongoing support at \$984 per month, with arrears of \$9083 for the period from August 2002 through September 2004.³ Mr. E. filed an appeal and requested a hearing on October 7, 2004.⁴

¹ Exh. 6.

² Exh. 7.

³ Exh. 10.

⁴ Exh. 11.

At the formal hearing, CSSD stated this case concerns only those arrears that accrued during the period from August 2002 through February 2003. As of March 2003, Mr. E. has had custody of R., and his ongoing child support obligation has been suspended as of that date. In addition, Ms. P. withdrew from CSSD's services in April 2003, so CSSD will not be collecting the arrears that accrued from August 2002 through February 2003 because those arrears were owed to her.

Mr. E. said his only issue on appeal is that CSSD calculated his child support at \$984 per month and charged him with arrears of \$9083 even though he provided all the necessary documents to verify he was entitled to a deduction for paying support for a prior child. Mr. E. testified he paid support pursuant to a Washington court order for many years for a prior child who emancipated in September 2004. Mr. E. provided a copy of the court order and also a letter from his ex-wife to verify that he has paid support for a prior child since 1993.⁵

At the close of testimony, CSSD was directed to file revised calculations for 2002 and 2003. After the hearing, CSSD submitted a calculation of \$570 per month for 2002. It is based on Mr. E.'s actual income, and includes the deductions for his retirement and the support he paid for his prior child.⁶ For 2003, CSSD calculated Mr. E.'s support at \$665 per month, based on his actual income. This calculation also includes Mr. E.'s retirement deduction and the support payment for his prior child.⁷

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. E. 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. E. paid support for a prior child in the amount of \$524 per month through September 2004;
3. Mr. E. assumed custody of the Obligee R. in March 2003;
4. Ms. P. withdrew from CSSD's services in April 2003;
5. CSSD correctly calculated Mr. E.'s child support at \$570 per month for 2002 and \$665 per month for 2003.

⁵ Exh. 9 at pg. 4 & Exh. 11 at pg. 2.

⁶ Exh. 14 at pg. 2.

⁷ Exh. 14 at pg. 3.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁸ 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.

Mr. E. testified he has a retirement deduction, and that he paid support for a prior child through September 2004, the month the child emancipated. He provided documents verifying his testimony, and CSSD revised his calculations accordingly.⁹ The calculations are correct at \$570 per month for 2002 and \$665 per month for 2003.

CSSD verified before the hearing that Mr. E. assumed custody of R. in March 2003, so his child support obligation was suspended by CSSD as of March 2003.¹⁰ In addition to that, the arrears are owed directly to Ms. P., so her withdrawal from services means CSSD will not collect those arrears unless Ms. P. once again obtains custody and applies for services. Mr. E. said he expects to have ongoing custody of R.

CSSD requested that ongoing child support be set for 2004, and suspended because Mr. E. now has custody of R. It is not necessary to enter a child support amount for 2004 because Mr. E. assumed custody of R. early in 2003. In the event Mr. E. ever becomes liable for paying support in the future, CSSD may begin collecting the 2003 support amount. If many years have passed, Mr. E.'s support obligation most likely would have to be modified anyway. CSSD's revised calculations should be adopted.

IV. Conclusion

Mr. E. met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect because CSSD did not include his retirement deduction or his support payment for a prior child. Mr. E. has had custody of R. since March 2003, so his support obligation will be suspended as of that date. Finally, Ms. P. withdrew from services in April 2003, so all the arrears owed to her will not be collected unless she once again obtains custody of R. and applies for child support services.

V. Child Support Order

1. Mr. E. is liable for child support arrears in the amount of \$570 per month for August 2002 through December 2002, and \$665 per month for January 2003 through February 2003;

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁹ See Exh. 9 at pgs. 14-16 & Exh. 11 at pg. 2.

¹⁰ Exh. 14 at pg. 1.

Ongoing child support is suspended as of March 2003, and shall remain suspended so long as Mr. E. remains R.'s custodial parent.

DATED this 26th 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 C. A. E. 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 26th 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.]