

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

IN THE MATTER OF:	)	
	)	OAH No. 04-0165-CSS
K. L. S.	)	CSSD NO. 001129366
_____	)	DOR NO. 040767

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor K. L. S.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 29, 2004. The Obligee child is A., DOB 00/00/87.

The formal hearing was held on January 13, 2005. Ms. S. appeared in person; the Custodian of record, S. C. Y., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 13, 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 Ms. S.'s appeal should be granted; her child support obligation should be calculated using her actual income.

**II. Facts**

**A. History**

On May 10, 2004, CSSD served an Administrative Child and Medical Support Order on Ms. S.<sup>1</sup> She requested an administrative review on August 25, 2004.<sup>2</sup> After the review, CSSD issued an Amended Administrative Child and Medical Support Order on September 29, 2004, that set ongoing support at \$232 per month, with arrears of \$1856 for the period from February 2004 through September 2004.<sup>3</sup> Ms. S. appealed on October 27, 2004.<sup>4</sup>

At the formal hearing, Ms. S. testified she cannot afford the child support amount CSSD calculated because she has been a stay-at-home mother since 1994 and has not earned any income. Ms. S. said she is remarried. She and her husband, who is a delivery driver, have three

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 5.

<sup>4</sup> Exh. 6.

children in the home who range in age from 5 to 13 years of age. Ms. S. said she and her husband made a joint decision that she would not work until the youngest child was in school full-time, which would not have been for another year. However, Ms. S. returned to the work force a year earlier than they had planned because of her support obligation for A.. Ms. S. said she started work in November 2004, and earns \$2244 per month in gross wages. She added she pays \$106 per month for medical insurance premiums for 6 people, including A., and her husband also pays \$10 per month to have A. covered on his insurance.

Ms. S. testified that her support obligation in this case began as a result of A. leaving the home and running away beginning in June 2003. She eventually ended up in treatment. Ms. S. said she participated in A.'s treatment through the family counseling program, but A. was discharged because she kept running away.

Ms. S. said A. went to live with Mr. Y. on February 5, 2004. Ms. S. testified that on March 29, 2004, Mr. Y. called to tell her he would be gone for awhile, and someone named "B." would be house-sitting for him and taking care of A.. Ms. S. said that on April 2, 2004, A. called her to say that Mr. Y. had been in jail and A. was left to care for herself. Ms. S. said she asked A. if she wanted to come home, but A. said she would be alright and would stay at Mr. Y.'s house.

Ms. S. said that on May 17, 2004, A. called her to say that Mr. Y. had kicked her out of the home a week earlier and she was going to stay with her friend, C. However, it did not work out for A. to stay at C.'s house, so in June 2004, A. returned to Ms. S.'s home. Ms. S. said that conflicts developed between her and A., so A. went to live at her paternal grandfather's house at the end of June 2004. Ms. S. said that the arrangement lasted about a week, at which time A. stayed at a social service agency for minors.

Ms. S. further testified that A. returned to her grandfather's home in early July 2004, and Mr. Y. also moved in with them at that time. Ms. S. said A. remains there, but Mr. Y. does not live with them, although he stays overnight on occasion. Ms. S. asserted the child support she pays should go to A.'s grandfather, not to Mr. Y. CSSD recommended that Ms. S. inform the grandfather he can apply for CSSD's services in order to have the support payments sent to him.

At the close of testimony, CSSD said it would not oppose a "good cause" variance in Ms. S.'s arrears prior to the time she started working because she has subsequent children in the home, including one who is of pre-school age. Also, CSSD said Ms. S.'s medical insurance

credit would be \$19 per month for the premiums she and her husband pay for A.'s insurance coverage.<sup>5</sup>

CSSD indicated Mr. Y. has a child support case with CSSD in which he is obligated to pay Ms. S. child support for A.. The case number is 001035537, and CSSD requested that the child support decision in this case direct CSSD to offset Ms. S.'s child support against Mr. Y.'s child support, pursuant to CSSD's regulations at 15 AAC 125.455. The request was granted.

After the hearing, CSSD submitted a Post Hearing Brief that contains a revised calculation of \$329 per month as of December 2004, based on Ms. S.'s new employment.<sup>6</sup>

### **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), Ms. S. met her burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect;
2. Public assistance benefits began to be paid on A.'s behalf in February 2004;
3. Ms. S. was a stay-at-home mother until mid-November 2004 who had no income other than her annual PFD;
4. Ms. S.'s child support obligation is \$50 per month through November 2004, based on her actual income;
5. Ms. S. began working on November 16, 2004, and earns \$2244 per month;
6. Effective December 2004, CSSD correctly calculated Ms. S.'s child support at \$329 per month.

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>7</sup> This obligation begins when the child is born.<sup>8</sup> 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).<sup>9</sup>

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<sup>5</sup> CSSD divided Ms. S.'s \$106 premium by 6 people covered, to arrive at \$18 per person, rounded to the nearest dollar. Ms. S. is entitled to a credit of 50% of that amount, or \$9, that she pays for K. Ms. S. also receives a credit of \$10 for the premium her husband pays for K.

<sup>6</sup> Exhs. 7 & 8.

<sup>7</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>8</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

<sup>9</sup> 15 AAC 125.105(a)(1)-(2).

In this case, public assistance benefits began to be paid on A.'s behalf in February 2004, when she went to live with her father, Mr. Y. Ms. S. is liable to reimburse the state for those public assistance benefits.<sup>10</sup> There is some question whether Mr. Y. was entitled to receive the benefits each month, but the Division of Public Assistance (DPA) must make that determination. In the event Ms. S. does not have to reimburse the state for every month at issue, DPA and CSSD will resolve those issues with her. In the meantime, Ms. S. is liable for support for A. effective February 2004, with the exception of June 2004, when A. lived in the home with Ms. S.

CSSD stated it would not oppose a "good cause" variance in Ms. S.'s arrears for the period of time from February 2004 through November 2004, when she returned to work. However, it is not necessary to apply a "good cause" variance to Ms. S.'s arrears because her actual income yields a child support amount of \$50 per month, which is the minimum amount that may be ordered.<sup>11</sup> CSSD's amended order calculated Ms. S.'s support at \$232 per month for that period of time, but the calculation is incorrect because CSSD imputed the minimum wage to Ms. S. She was voluntarily unemployed, which was a reasonable decision Ms. S. made with her husband because they have a pre-school aged child.

Ms. S. returned to the workforce on November 16, 2004. She earns \$2244 per month, which equals annual income of \$26,928. When the PFD and her mandatory deductions are factored into the calculation, it results in a child support amount of \$329 per month. CSSD correctly calculated this figure, and it should be adopted as of December 2004. Ms. S. will be liable for this amount until A. turns 18 years old on June 10, 2005. Mr. Y. has a reverse party" case in which he owes Ms. S. support, so CSSD has indicated it will offset Ms. S.'s arrears against his pursuant to 15 AAC 125.455.

#### **IV. Conclusion**

Ms. S. met her burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect. Ms. S.'s child support should be calculated based on her actual income.

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

1. Ms. S. is liable for child support in the amount of \$50 per month for the period from February 2004 through May 2004, and July 2004 through November 2004;

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<sup>10</sup> AS 25.27.120(a).

<sup>11</sup> Civil Rule 90.3(c)(3).

2. Ms. S. is liable for ongoing child support in the amount of \$329 per month, effective December 2004;
3. Ms. S. is not liable for support in this administrative action for June 2004;
4. CSSD is directed to offset Ms. S.'s case with Mr. Y.'s reverse party case number 001035537.

DATED this 23rd 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 K. L. 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 23rd 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.]