

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

IN THE MATTER OF)	
)	
J C)	Case No. OAH-04-0187-CSS
)	Previous Case No. 040789
_____)	CSSD Case No. 001128886

DECISION & ORDER

I. Introduction

The obligor, J C, appealed an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on September 3, 2004. Administrative Law Judge Dale Whitney heard the appeal on January 12, 2005. Mr. C appeared by telephone, as did the custodian of record, T M. Andrew Rawls represented CSSD. The child is J C (DOB 00/00/2000). The administrative law judge finds that Mr. C owes support for the period from November 2003 through April 2004 and issues a support order accordingly.

II. Facts & Discussion

This case presents a single question of fact: whether Mr. C was living in the family with J during the six-month period from November 1, 2003 through April, 2004. J received public assistance for this time period, but Mr. C was not listed on the grant as someone living in the family home. CSSD concedes that J was with Mr. C at all times after May 1, 2004, and it has suspended collection of ongoing support from that time. But the agency asserts that the state is entitled to reimbursement of public assistance paid on J's behalf before that time.

Mr. C and Ms. M offered contradictory testimony at the hearing. Ms. M testified that during the period in question, Mr. C stayed with her and J approximately two to five nights per month. Mr. C testified that he stayed in the home approximately 25 nights per month, and only left when the couple was fighting. Ms. M stated that Mr. C had been prohibited by court order from having contact with her older son from a previous relationship, and that is why he was not in the home more often. Mr. C testified that the court order prohibiting contact had been lifted during the time in question.

The decision in this case largely comes down to a question of credibility. The tone and demeanor of the witnesses offered little to suggest that one was more credible than the other. Both could be considered to have a motive for untruthfulness; Mr. C's obligation to pay support during the six-month period hinges on whether he was in the home, while Ms. M received assistance for the period based on her representation to the Department of Public Assistance that

she lived alone. The parties agree that they fought with each other quite a bit during the time in question. There were some allegations of alcohol abuse during this time.

The parties do not dispute that Mr. C was employed during the time in question. CSSD points out that the Alaska public has expended funds to support J while his father had an income. CSSD argues that this assistance was based on an understanding that Mr. C was not in the home with the child, and that the public is now entitled to reimbursement. During the hearing, Mr. C testified as follows:

CSSD: We're concerned with November 3 through April 2004. So is it your testimony that you lived with the child, with J, during that time?

Mr. C: Yes it is.

CSSD: Were you aware that J was on a public assistance grant?

Mr. C: He wasn't supposed to be. There was no need for that. I was working at the time.

CSSD: And you were supporting the family?

Mr. C: Yes.

CSSD: I have no other questions of Mr. C, sir.

ALJ: Thank you, Mr. Rawls. Mr. C, on that last question I think the question was, were you aware of the public assistance grant.

Mr. C: I don't believe so. I told T to get off that because there was no reason for that, because I was working and supporting everybody at the same time.

In this exchange, Mr. C denied knowledge of the grant of public assistance, but at the same time he testified that he had told Ms. M to withdraw from public assistance. It does not follow that Mr. C would tell Ms. M to get off public assistance if didn't know she was receiving public assistance in the first place. I find it improbable that Mr. C would be living in the home without knowing that Ms. M was receiving public assistance. Since Mr. C did have some knowledge of the possibility of the household receiving public assistance, I also find it unlikely that Mr. C would be living in the home without taking the initiative himself to advise the Department of Public Assistance of the fact, thereby relieving himself of the duty to pay child support for the period.

In a formal hearing, the person who has requested the hearing has the burden of proving that the actions to which he objects are incorrect.¹ While it is impossible to determine with any certainty what happened in this case, I find that Mr. C has not met his burden of demonstrating that CSSD was incorrect to conclude that he was not in the home from November 1, 2003 through April 4, 2004.

III. Conclusion

The Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on September 3, 2004 should be affirmed, but CSSD should suspend collection of support from May 1, 2004 until such time as Mr. C is no longer in the home with J.

IV. Order

IT IS HEREBY ORDERED that the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on September 3, 2004 be AFFIRMED.

IT IS FURTHER ORDERED THAT CSSD suspend collection of support from May 1, 2004 until such time as Mr. C is no longer in the family home with the child.

DATED this 24th day of February, 2005.

By: Signed
DALE WHITNEY
Administrative Law Judge

¹ 15 AAC 05.030(h).
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Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the child support obligation of J C be adopted 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 withholding. 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 date of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, should be addressed to: 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 24th day of February, 2005

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

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