

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

IN THE MATTER OF)	OAH No. 04-0218-CSS
K A. K)	DOR No. 040824
)	CSSD No. 001069433
_____)	

DECISION AND ORDER

I. Introduction

On February 28, 2005, a formal hearing was held to consider the child support obligation of K A. K (Obligor) for the support of his children, X and Y (Obligees).¹ Mr. K appeared. The Custodian, S L, did not participate. David Peltier, Child Support Services Specialist, represented the Child Support Services Division (CSSD). The hearing was tape-recorded. The record closed at the end of the hearing.

I, Mark T. Handley, Administrative Law Judge for the Alaska Office of Administrative Hearings was appointed to hear this appeal by the Chief Administrative Law Judge, Terry Thurbon.

This case is Mr. K' appeal of CSSD's order establishing child support for X and Y. Having reviewed the record in this case and after due deliberation, I conclude that Mr. K' arrears and ongoing child support should remain at the amounts set in CSSD's Amended Administrative Child and Medical Support Order issued on October 27, 2004. Mr. K should receive credits for the direct payments that CSSD approved in its Pre Hearing Brief, plus the \$213 payment Mr. K made with check number 1830. Collection of all but three months of arrears in this case is suspended.

II. Facts

A. History

The children, X and Y, received public assistance from January 2004 through March of 2004. Paternity is not in dispute. Mr. K is named as X and Y's father on their birth certificates. Ms. L withdrew from CSSD's services in September of 2004.

¹ The hearing was held under Alaska Statute 25.27.170.

CSSD served Mr. K with an Administrative Child and Medical Support Order on August 30, 2004. Mr. K requested an administrative review.

CSSD issued an Amended Administrative Child and Medical Support Order on October 24, 2004. CSSD set Mr. K' ongoing child support at \$992 per month. The order established arrears totaling \$10,018.27 going back to January 2004. Mr. K appealed that amended order. He requested a formal hearing.

Prior to the hearing, CSSD filed a Pre Hearing Brief. CSSD explained that Mr. K owed child support for the months that the children were on public assistance. CSSD had sought to collect a total of only \$2,976 for those months. CSSD had reviewed the documentation that Mr. K had provided showing payments he made to Ms. L. CSSD agreed that Mr. K should receive \$2,431 in total credits for direct payments of child support during the period that the children were on public assistance. CSSD agreed that this \$2,431 credit should be applied against \$2,976 that CSSD sought to collect.

Prior to the hearing, Mr. K filed a copy of both sides of check number 1830, for \$213.

At the hearing, Mr. K agreed with the monthly amounts of child support in CSSD's Amended Administrative Child and Medical Support Order. Mr. K also agreed with the new credits of direct payments that CSSD had approved in its Pre Hearing Brief. At the hearing, Mr. K' only remaining issue was that he also wanted credit for the \$213 payment he made with check number 1830. After listening to Mr. K' explanation of that check, CSSD agreed that he should also receive a credit for this direct payment of child support.

B. Findings

Based on the evidence in the record, I conclude that it is more likely than not that CSSD's calculations at Ex. 8 are correct.² It is also more likely than not that Mr. K made \$2,644 in total direct payments of child support to Ms. L from January 1, 2004 to March 31, 2004.³ This includes the \$213 payment Mr. K made with check number 1830.

III. Discussion

The strict rules that apply to credits for direct payments of child support do not necessarily apply to payments made prior to the establishment of a child support order.⁴ CSSD correctly determined that Mr. K should not pay arrears without a credit for the support he

² Ex. 8 & Tape of Hearing.

³ Ex. 4, 10, 11 & Tape of Hearing.

provided for his children, because he did not wait for a child support order before paying Ms. L. Mr. K explained at the hearing that he made the direct payments to both Ms. L and to her bank because that was the way Ms. L had asked that he pay for the children's support. Mr. K testified that he did not know that his children were receiving public assistance at the time he made these payments.

CSED correctly agreed to credit Mr. K with direct payments of child support totaling \$2,644, made while the children were on public assistance.

Collection of arrears for months when the children were not on public assistance and collection of ongoing child support has been suspended because Ms. L withdrew from CSSD's services.

As discussed at the hearing, if Mr. K can show his caseworker that he has had out-of-pocket expenses to provide health insurance for the children, he is entitled to an additional credit for half of those expenses.

IV. Conclusion

CSSD correctly established arrears going back to the month that an application for public assistance was filed for the children. I find Mr. K' arrears and his ongoing child support should be set in accordance with CSSD's latest calculations in the Amended Administrative Child and Medical Support Order. I conclude that Mr. K should receive credits for direct payments of child support totaling \$2,644.

V. Child Support Order

1. Mr. K' ongoing support obligation in this case is \$992 per month, effective March 1, 2005, but collection of ongoing support is suspended as the custodial parent, Ms. L, has withdrawn from CSSD's services.
2. Mr. K is liable for child support arrears in this case in the amount of \$992 per month for the months of January, February and March of 2004.
3. Mr. K is also liable for child support arrears in this case in the amount of \$992 per month for the months of April 2004 through February 2005, but collection of these arrears is suspended as Ms. L, has withdrawn from CSSD's services.
4. Mr. K should receive total credits of \$2,644 against his arrears for his direct payments of child support to Ms. L.

⁴ *Ogard v. Ogard*, 808 P.2d 815, 817 (Alaska 1991)

5. The parties should receive the appropriate credits or debits for health insurance costs for the children.

DATED this 4th day of March, 2005.

By: Signed
Mark T. Handley
Administrative Law Judge

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 concerning the child support obligation of K A. K 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 the written decision of the hearing officer, 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 4th day of March, 2005.

By: Signed
Terry Thurbon
Chief Administrative Law Judge

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