

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

IN THE MATTER OF)	OAH No. 04-0307-CSS
M A. B)	CSSD No. 001130190
)	
_____)	

DECISION AND ORDER

I. Introduction

On March 29, 2005, a formal hearing was held to consider the child support obligation of M A. B (Obligor) for the support of his children, X and Y (Obligees).¹ Mr. B appeared. The Custodian, C A. B, also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (CSSD). The hearing was tape-recorded. The record closed on April 22, 2005.

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. B' 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. B' arrears and ongoing child support should remain at the amounts set in CSSD's Amended Administrative Child and Medical Support Order issued on November 16, 2004. Mr. B should receive \$4,000 in credits for the direct payments.

II. Facts

A. History

Ms. B requested child support services for her children, X and Y in Florida in April of 2004. The State of Florida filed a Uniform Interstate Family Support Act (UIFSA) petition with CSSD. Paternity is not in dispute. Mr. B is named as X and Y's father on their birth certificates.

CSSD served Mr. B with an Administrative Child and Medical Support Order on September 13, 2004. Mr. B requested an administrative review.

CSSD issued an Amended Administrative Child and Medical Support Order on November 16, 2004. CSSD set Mr. B' ongoing child support at \$915 per month. The order

established arrears going back to April 2004. Mr. B appealed that amended order. He requested a formal hearing.

Prior to the hearing, CSSD filed a Pre Hearing Brief. CSSD explained it had recalculated Mr. B' child support by imputing the maximum military housing benefit for his zip code. These calculations result in a monthly child support amount of \$979 per month.

After the hearing, Mr. B filed copies of checks for the additional \$1800 in direct payments to Ms. B. CSSD agreed that he should receive credits for these direct payments of child support.

B. Findings

No party showed by a preponderance of the evidence that CSSD's calculations at Exhibit 6 or the monthly amounts set in CSSD's Amended Administrative Child and Medical Support Order issued on November 16, 2004 were incorrect.² However, Mr. B showed by clear and convincing evidence that he made a total of \$4,000 in total direct payments of child support to Ms. B from April 2, 2004, to November 3, 2004.³ No cash grants of public assistance were made during this period.⁴

III. Discussion

Credits for direct payments of child support are allowed even after an obligor has been notified that he should pay through CSSD, as long as the payments are not for a period when the children were receiving public assistance and the obligor provides clear and convincing evidence that the payments were made.⁵ After Mr. B documented the payments, CSSD correctly agreed to credit Mr. B with direct payments of child support totaling \$4,000.⁶

A party challenging an administrative child support order has the burden of showing the factual determinations upon which that order is based are incorrect.⁷

At the hearing, Mr. B also argued that CSSD overestimated the value of his housing benefit. He asserted that he was living in the barracks, and that the market value of his room was

¹ The hearing was held under Alaska Statute 25.27.170.

² Ex. 8 & Tape of Hearing.

³ Ex. 4, 10, 11 & Tape of Hearing.

⁴ Ex. 8, page 1.

⁵ Alaska Regulation 15AAC 125.465.

⁶

⁷ Alaska Regulation 15 AAC 05.030(h).

less than the employer-provided housing allowance amount that CSSD had used to calculate his income. CSSD had estimated the value of Mr. B' housing benefit because he had redacted the only Leave and Earnings Statement he had provided, covering up the parts that would have showed the amount that he received for his employer-provided housing allowance.

The record was held open to provide Mr. B with the opportunity to provide documentation of his assertions about his employer-provided housing. I told Mr. B that he would also have to provide an unredacted copy of his latest Leave and Earnings Statement if he wanted me to consider his argument that his child support should be reduced because he was living in the barracks.

At the hearing I ordered that if Mr. B provided this documentation, CSSD was to recalculate his child support, with one calculation using the documented value of Mr. B' employer-provided housing, and one calculation using the employer-provided housing allowance amount he could receive if he lived off base. These calculations were to have used the updated income information from his unredacted Leave and Earnings Statement.

Unfortunately, Mr. B did not provide an unredacted Leave and Earnings Statement or documentation of the value of his employer-provided housing. CSSD attempted to recalculate Mr. B' child support obligation again, as I had requested. Without updated income information, however, CSSD had to estimate his income and housing allowance using military pay schedule data. Because Mr. B provided no documentation of the value of his employer-provided housing, CSSD simply provided calculations with and without any employer housing benefit.

This case was Mr. B' appeal. He showed that he should receive more in direct payments than he had been credited, but he did not show that the monthly child support amounts set in CSSD's Amended Administrative Child and Medical Support Order were incorrect.

Mr. B did not meet his burden of proof in attempting to demonstrate that his monthly child support amounts should be lower. He may have been able to demonstrate this if he had provided the documentation he said that he would provide.⁸

CSSD did not show that the amounts in the Amended Administrative Child and Medical Support Order were incorrect either. CSSD did not have updated income information. It is still unclear what level of housing benefit Mr. B receives. CSSD could only show that the amounts

⁸ If Mr. B is living on base and the value of his housing is less than the allowance he would receive to live off base, the value of his housing rather than the allowance should be used to calculate his income. *See Beard v. Morris*, 956 P2d

would be different if different estimates of income and housing benefits were used. The estimates used in CSSD's latest calculations are no more likely to be accurate than are the estimates CSSD used to calculate the monthly amounts in the Amended Administrative Child and Medical Support Order.

IV. Conclusion

CSSD correctly established arrears going back to the month that Ms. B filed an application for child support services. I find Mr. B' arrears and his ongoing child support should be set in accordance with CSSD's Amended Administrative Child and Medical Support Order. I conclude that Mr. B should receive credits for direct payments of child support totaling \$4000.

V. Child Support Order

CSSD's Amended Administrative Child and Medical Support Order issued November 16, 2004 is Affirmed, except that his total credit for direct payments of child support to Ms. B is \$4000.

DATED this 28th day of June, 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 M A. B 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 28th day of June, 2005.

By: Signed
Terry Thurbon
Chief Administrative Law Judge

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