

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

IN THE MATTER OF)	
)	Case No. OAH-04-0325-CSS
R. W.)	Previous Case No. 010410
_____)	CSSD Case No. 001012543

DECISION & ORDER

I. Introduction & Procedural History

The obligor, R. W., appealed a Modified Administrative Child Support and Medical Support Order issued by the Child Support Enforcement Division (CSED) on August 23, 2001. The Department of Revenue heard the appeal on October 15, 2001, and issued a Child Support Decision on November 16, 2001. Mr. W. appealed this decision, and the Superior Court affirmed it on May 12, 2003. Mr. W. then appealed the case to the Supreme Court. On November 3, 2004, the Supreme Court affirmed the Superior Court's decision in part, reversed in part, and remanded the case to the Superior Court with instructions to remand the case to CSED (now known as the Child Support Services Division, or CSSD) for further proceedings consistent with the opinion.

The Office of Administrative Hearings held a second hearing on May 19, 2005. Mr. W. appeared by telephone from the Anchorage CSSD office. The custodian of record, M. W., appeared by telephone. David Peltier represented CSSD. The child obligee in this case is V. W. (DOB xx/xx/1984). The administrative law judge vacates the modified order.

II. Facts

The May 19, 2005 hearing was limited to the issue of determining Mr. W.'s actual income in 2001 and 2002, and determining whether any portion of support accruing after the effective date of the modification was used to reimburse the State of Alaska for public assistance. In a pre-hearing brief, CSSD reported the following information:

The Order on Remand dated March 4, 2005 directs CSSD to be prepared to provide all relevant information available on whether any portion of support accruing after the effective date of the modification, August 1, 2001, was used to reimburse the State of Alaska for public assistance. CSSD's records show that the case...currently has no outstanding balance. The case shows the following payments were repayments for public assistance:

September 30, 2001	\$158.79
November 30, 2001	\$317.58
December 31, 2001	\$158.79
January 31, 2002	\$158.79
February 28, 2002	\$158.79
April 30, 2002	\$1,071.83
June 30, 2002	\$252.80
July 31, 2002	\$126.40
October 31, 2002	\$1,538.76
October 31, 2003	\$870.68

Total **\$4,813.21**

The case shows the following interest payments to the State of Alaska:

October 31, 2002	\$10.29
October 31, 2003	\$147.40

Total **\$157.69**

At the hearing, Mr. W. testified about his income in 2001 and 2002, and he provided copies of the joint tax returns he and his wife filed for the two years.¹ After reviewing the tax returns, CSSD determined that for 2001 Mr. W.'s gross income was \$23,051.28 and his adjusted annual income was \$22,279.21. For 2002, Mr. W.'s gross income was \$18,456.76, and his adjusted annual income was \$18,447.39. At these levels of income, Mr. W.'s support obligation would be \$371 per month for one child in 2001, and \$307 per month for one child in 2002.²

III. Discussion

In the previous order, Mr. W.'s support amount had been set at \$158.79 per month. This amount was specified in a letter that the Deputy Commissioner of Revenue had written to Mr. W. on August 14, 2000, in which he agreed that the Department of Revenue would not seek to increase the amount of support for the remainder of the child's minority. The letter stated that if Mr. W. made his payment each month, the case would close in February 2002, when the child emancipated. After the deputy commissioner sent this letter, the custodian petitioned for modification. The hearing examiner found that while the state could waive its right to seek modification of the support order, it could not interfere with the custodian's right to seek a higher level of support. The hearing examiner therefore ordered that the support amount be increased to \$452 per month.

¹ Exhibit 1A.
OAH No. 04-0325-CSS

While the Superior Court and the Supreme Court affirmed the hearing examiner's decision regarding the custodian's right to seek higher support regardless of any waiver or estoppel argument against the state, the Supreme Court did identify a technical error on the part of the hearing officer. At the first hearing, Mr. W. and CSSD agreed that Mr. W.'s income was about \$25,000 per year. The hearing officer relied on a calculation that had been previously prepared by CSSD based on \$25,592.50 in wage income, plus a PFD and \$5,624 in unemployment insurance benefits. A careful review of the hearing record shows that when he spoke of the \$25,000 annual amount, Mr. W. had been asked about his income, not his wages. Because of the other income included in the calculation above and beyond Mr. W.'s wages, the adjusted annual income in that calculation was higher than it would have been for adjusted annual income based on just \$25,000 of gross annual income.

The Supreme Court also identified one additional legal issue. The court agreed that the state could not waive the custodian's right to seek modification of the support amount, but it noted that "the record is unclear whether this child support money would be paid to M. W. for the support of V. or whether it would go to the state as reimbursement for AFDC." The court suggested that "the superior court should on remand consider the argument that the letter [written by the deputy commissioner] constitutes estoppel or waiver if it finds that some portion of the support collected was to reimburse the State."

The Supreme Court relied on *State, Dept. of Revenue, Child Support Enforcement Division, ex rel. Valdez v. Valdez*, 941 P.2d 144 (Alaska 1997). In that case, the issue involved unpaid arrears. Because the *Valdez* court was addressing support for times that had already passed, it could determine what portion of support would go to the state and how much would go to the custodian. In Mr. W.'s case, the support that was at issue at the first hearing was prospective, and the hearing officer did not have the ability to foresee whether the custodian would continue to receive public assistance. At the time of the hearing examiner's decision, the custodian had a real interest in the outcome of the case, because with a modification she might have collected more support if it had turned out that she went off public assistance before the child emancipated.

With the passage of time, the perspective of the case has changed. At the first hearing in 2001, the hearing examiner was estimating Mr. W.'s likely income prospectively; the record has since been reopened for evidence of how much Mr. W. actually earned in 2001 and 2002. It is

also now known that after the effective date of the modification, the state collected \$4,813.21 in reimbursement for public assistance.

From the evidence now in the file, it appears that Ms. W. would not benefit from any increase in the amount of support Mr. W. might pay over the seven months affected by the order. The evidence now available still leaves room for some debate about how much Mr. W. actually earned or could have earned in 2001 and 2002. But the highest end of the possible range does not exceed the amount in the modified order, which was based on adjusted annual income of \$27,146. Under that calculation, the total amount Mr. W. was obligated to pay over the seven-month period of the order was \$3,164. This represented an increase of \$293.21 per month, which over the seven months totals \$2,052.47. Considering that CSSD applied \$4,813.21 after August 2001 towards reimbursement of the state for public assistance and then closed Mr. W.'s account, it seems unlikely that Ms. W. received any benefit from the increase.

IV. Conclusion

Under these circumstances, Mr. W.'s assertion that the state has waived its right to collect reimbursement beyond the amount the deputy commissioner agreed to has merit. The Supreme Court, both in its decision in this case and in *Valdez*, has held that CSSD may waive its right to seek reimbursement from an obligor for benefits paid on behalf of a child. The modified order issued by the hearing examiner in this case should be vacated, and Mr. W.'s account should be settled according to the terms agreed upon by the Deputy Commissioner of Revenue in his letter of August 14, 2000 to Mr. W.

V. Order

IT IS HEREBY ORDERED that the Department of Revenue's Child Support Decision of November 16, 2001 be VACATED.

DATED this 29th day of August, 2005.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

Adoption

I, Tom Boutin, hereby adopt this order as the final administrative determination by the Commissioner of Revenue 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 29th day of August, 2005

By: Tom Boutin
Deputy Commissioner
Alaska Department of Revenue