

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

In the matter of:)	
)	OAH No. 06-0063-CSS
D. D. G.)	CSSD No. 001121897
_____)	

DECISION AND ORDER

I. Introduction

D. G. appealed an Order Establishing Paternity that the Child Support Services Division (CSSD) issued in his case on January 10, 2006. The child is J. J. V., born 00/00/03. J.'s mother is B. A. V.

The Alaska Office of Administrative Hearings (OAH) gave notice to both parents of a formal hearing to be held February 15, 2006 at 9:00 a.m., using Certified Mail sent 15 days in advance. The return receipts confirm that Ms. V. received her notice on February 3 and Mr. G. received his on February 8. Prior to the hearing, CSSD filed and mailed to both parties a Prehearing Brief.

A. J. Rawls, Child Support Specialist, appeared for CSSD at the appointed time for the hearing. Ms. V. participated by telephone. Mr. G. contacted OAH in advance of the hearing and gave a telephone number from which he would participate. The Administrative Law Judge called that number at the time of the hearing and failed to reach him, but left a voice mail message. The administrative law judge took testimony from Ms. V. and Mr. Rawls about the issues in the appeal.

Mr. G. later called the OAH clerk and said that he did not participate in the hearing because he does not get up until 10:00 a.m. He was informed at that time about the procedure to request that the hearing be reopened. Under 15 AAC 05.030(j), "[i]f a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear." Mr. G. did not attempt to make the required showing within ten days after the scheduled hearing, and therefore the administrative law judge will proceed with the decision.

II. Summary of Decision

Because CSSD took the appropriate steps regarding paternity, the Order Establishing Paternity will be affirmed. *If Mr. G. continues to doubt that he is the father, he can and should go through the quick and painless process of getting a cheek swab taken for a paternity test.* Unless he does that, he will remain the legally-determined father of the child.

III. Findings of Fact

When J. was born on 00/0003, she was at 36 weeks' gestation. J. was therefore probably conceived in early August, 2002.

Ms. V. testified that she had a relationship with Mr. G. from March of 2002 until the early fall of that year. In the course of the relationship, Ms. V. would visit Mr. G. at an apartment at 1000 No Name Drive in Anchorage, where Mr. G. indicated that he was staying with his mother. The relationship ended shortly after Ms. V. learned she was pregnant. She did not tell Mr. G. she was pregnant, because at the time she believed another man was the father. However, the other man has since been tested for paternity, and the test was negative. She and CSSD believe Mr. G. is the next most likely candidate.

In his appeal request, Mr. G. contended that he was not in Anchorage when the child was conceived and does not even know the mother. However, the evidence shows that in September of 2005 Mr. G. applied for Medicaid benefits using a Palmer address. Palmer is not very far from Anchorage. A few months later, in January of 2003, he applied for food stamp benefits. The address he used was 1000 No Name Drive in Anchorage.

I find that Mr. G. was present in the Anchorage area during the period of conception, and that he had a relationship with Ms. V. at that time that could have led to a pregnancy.

On December 7, 2005, CSSD made personal service upon Mr. G. of a Notice of Paternity and Financial Responsibility, an Administrative Order for Genetic Testing, and a Response to Paternity Action form by which Mr. G. could admit or contest paternity.¹ The Notice stated in bold type, "You must return this form to CSED within 30 days of the date it was mailed to you or you will automatically be determined to be the father of the children."² Mr. G. did not

¹ Exhibit 1. Mr. G. also received the other materials required by AS 25.27.165(b) to initiate an administrative paternity proceeding.

² Exhibit 1, p. 5. The reference to "CSED" appears to be a typographical error in the form that CSSD ought to correct.

respond. On January 10, 2006, therefore, CSSD issued an Order Establishing Paternity.³ Mr. G. appealed that order to OAH, but he failed to appear at his own hearing.

IV. Decision

The Alaska law governing administrative paternity proceedings, AS 25.27.165, provides that “[i]f the putative father fails to file a response . . . the agency may issue a decision by default establishing paternity.”⁴ CSSD was therefore justified to issue its January 10, 2006 Order Establishing Paternity. The statute goes on to provide:

If a putative father who requests a formal hearing . . . fails to appear at the formal hearing, the hearing officer shall enter a final decision establishing paternity.⁵

Since Mr. G. has failed to appear at his formal hearing, the administrative law judge must affirm CSSD’s paternity finding.

CSSD recently issued a child support order in Mr. G.’s case. If Mr. G. continues to doubt paternity, he can still get a cheek swab paternity test by coming to CSSD within thirty days after he is served with that order. No appointment is needed. Alternatively, if that 30-day period has gone by, he could pursue a petition to disestablish paternity. If he does nothing, however, his paternity will remain established.

CSSD’s Order Establishing Paternity contains a provision that Mr. G. “is also liable to CSSD for \$45.00, which is the cost of paternity testing in this action.”⁶ CSSD is only authorized to assess against the putative father testing costs “that the agency pays.”⁷ In this case, no test was performed. Therefore, the cost should not have been charged to Mr. G. in the January 6 order.

V. Order

- The Order Establishing Paternity dated January 10, 2006 is affirmed, except that the provision that Mr. G. is liable for \$45.00 for the cost of paternity testing is vacated.

³ Exhibit 3.
⁴ AS 25.27.165(c).
⁵ AS 25.27.165(h).
⁶ Exhibit 3.
⁷ 15 AAC 125.261(a).

- D. D. G. is established as the legal father of J. J. V.

DATED this 20th day of March, 2006.

By: Signed
Christopher Kennedy
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

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.

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 after the date of this decision.

DATED this 3rd day of May, 2006.

By: Signed
Signature
Tom Boutin
Name
Deputy Commissioner
Title

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