

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
 U C)
_____)

OAH No. 13-1071-SNA
Agency No.

DECISION

I. Introduction

U C, a divorced mother of four, disagrees with the Division of Public Assistance’s (division’s) decision to deny her application for Food Stamps because her household’s income exceeded the maximum allowable amount for a household of five. Specifically, Ms. C challenges the division’s decision to count her children’s Children’s Insurance Benefits (CIB)¹ as unearned household income because she does not control or direct the funds. The dissolution agreement requires the payments go to her husband, and the division should be bound by its past treatment of CIB benefits. Ms. C’s arguments are reasonable. However, the issue is not who controls the CIB payment but rather whether her household has access to the CIB payment. Because it does have access, the CIB payment is counted as unearned income to Ms. C’s household. Therefore the division’s denial of the household’s Food Stamp application is affirmed.

II. Facts

The facts are undisputed. U C and T C have four children: J, G, M, and S. All are under the age of 18. The Cs divorced in 2007 and maintain separate households. Ms. C has the children 70% of the time and is the primary custodian. Mr. C has the children 30% of the time. Prior to their divorce Mr. C began receiving Social Security Disability Income (SSDI).² Because Mr. C receives SSDI, the children are entitled to receive CIB.³ CIB is not a means based program. It derived from Mr. C’s contributions when he was employed.

¹ Children’s Insurance Benefits are also referred to as “Child’s Insurance Benefits,” *see* 42 U.S.C. § 402(d), and while the latter may be more correct, the former has been more widely used in Alaska, having appeared in Alaska Supreme Court decisions, *see e.g. Miller v. Miller*, 890 P.2d 574, 577 (Alaska 1995). This decision uses the former term.

² Testimony of U C.

³ CIB payments are a form of Federal supplemental security income (SSI) provided to every minor dependent of someone who is disabled and receiving SSDI. 42 U.S.C. § 402(d)(1)..

The boys received CIB payments before the divorce and continue to receive CIB payments.⁴ At the time of the divorce the boys each received monthly CIB payments in the amount of \$230. At the time of hearing the amount had increased to \$298 per month.⁵

While the CIB is paid to the boys, because they are minors, the SSA requires a representative payee to accept the payments on behalf of and in trust for the boys.⁶ The responsibilities of a representative payee are set by regulation.⁷ Mr. C was their representative payee prior to the divorce and he continued to be after the divorce.⁸ The record is silent on whether the SSA was informed of the divorce or informed that Ms. C is the primary custodian of the children. Mr. C's mother, D A, is now the representative payee for the children.⁹ The record does not reflect when or how this change occurred.

Ms. C explained that even though she is the primary custodian of the boys, she has never attempted to become the boys' representative payee because the terms of the dissolution require CIB payments to go to Mr. C. She receives monthly child support in the amount of \$102. The paragraph that Ms. C believes precludes her from becoming the representative payee reads:

The person paying support currently receives social security or other disability compensation that includes regular payments to the child(ren) at least equal to the child support owed each month. Monthly payment to the children: \$230 per child/per month.

Source of payment: SSDI.

Note: to the extent that these payments to children do not satisfy the monthly amount owed, the court will order that the remaining amount due be withheld from income.^[10]

This is not the first time Ms. C has applied for food stamps. Each time she applied in the past, the division would question whether the CIB payments should be included in her household income, and each time after she explained that her husband received the CIB payments, the division would not count CIB as income to her household.¹¹ It is undisputed that counting the

⁴ Testimony of U C.

⁵ Exh. 2.14.

⁶ 20 C.F.R. § 404.2010.

⁷ 20 C.F.R. §416.601 - .665.

⁸ Testimony of U C.

⁹ Exh. 2.14.

¹⁰ Petition for Dissolution of Marriage (with Children), page 13, Form DR-105(10/6) CS (Divorce Order), Marked Exhibit A.

¹¹ Testimony U C.

CIB as household income places Ms. C above the maximum allowable income for food stamp eligibility. If, as before, CIB was not counted as unearned income, her household income would not exceed the maximum allowable for a household of five and her application would be approved.

III. Discussion

CIB is counted as unearned income.¹² The issue presented here is whether CIB received by a representative payee who is not a member of the household is unearned income to the household.¹³ The division argued that the CIB payments were third-party income diverted by the household to Mr. C to avoid it being counted as income to Mr. C's household. As discussed below, this decision ultimately concludes that the CIB payments are income to Ms. C's household, but not as a third-party payment. Rather, the CIB payments are income to the household because the payments are income to the children who are members of the household, and the household has access to the payments.

Eligibility for the Food Stamp program is determined on a household basis, not on an individual basis.¹⁴ A household's income includes all income from whatever source unless specifically excluded.¹⁵ If a child under the age of 22 is living with a parent, the child must be included in that parent's household.¹⁶ A person may only belong to one household at a time.

To prevail, Ms. C must establish by a preponderance of the evidence that her household income does not exceed the maximum for this program.¹⁷ Ms. C identified the boys as members of her household and she is seeking benefits for a household of five.¹⁸ She contends that although the boys are counted as her household members, their CIB payments should not be counted as unearned income for her household. Ms. C raises three arguments in support of her application: 1) that she has no control over the money so it should not be considered received by her household; 2) that the dissolution order requires Mr. C receive the CIB; and 3) that the division has not included CIB as income before and it should not do so now.

¹² 7 C.F.R. § 273.9(b)(1)(ii).

¹³ SSI and disability benefits for children are identified as unearned income for purposes of child support. 7 C.F.R. § 273.9(b)(2); 7 C.F.R. § 271.2 (definition of Supplemental Security Income).

¹⁴ 7 C.F.R. § 273.1(a).

¹⁵ 7 C.F.R. § 273.9(a).

¹⁶ 7 C.F.R. § 273.1(b)(2)..

¹⁷ 7 AAC 49.135.

¹⁸ Exh. 2.1.

1. Ms. C's Household May Not Have Control Over The CIB Payments But It Does Have Access.

Nothing in the record contradicts Ms. C's testimony that she is not the representative payee and that she never sees the money or directs how the payments will be spent. At first glance it would seem unjust to count the CIB as income to Ms. C's household because her household does not have control of the income. However, for purposes of Food Stamps eligibility, the focus is not on whether the household has control of the payment, but rather whether the household has access to the CIB payments.¹⁹

One case has been located that addresses the accessibility of CIB funds to the child's primary household when a non-household parent receives the benefit in trust for the child. This case, *Singer v. Com., Dept. of Public Welfare*, although old is instructive because *Singer* involved whether CIB benefits were income to the custodial parent's household for purposes of Food Stamps. In *Singer*, the custodial parent was receiving CIB payments as representative payee of the child. Any payment not used for the benefit of the child was to be set aside for education. The representative payee was then changed to the non-custodial parent, who was not part of the custodial parent's household.

The Dept. of Public Welfare counted the entirety of the CIB payment as income to the custodial parent's household.²⁰ The decision remained the same after the non-household parent was named representative payee. The court reasoned that there was no regulatory exclusion from household income for social security benefits and that the CIB payment was a liquid resource accessible to the custodial household.

Unlike *Singer*, Ms. C has never been a recipient payee. However, its rationale remains applicable. Having control of the payment is not the same as having accessibility to the payment. Regulation directs how CIB payments are handled. The SSA considers payments to a representative payee as being for the current maintenance of the beneficiary.²¹ Current maintenance includes food, shelter, clothing, and medical care.²² Mr. C may control the payments as the representative payee but the money must be used to meet the boys' needs. In this way, the boys' household has access to the money either directly (child support) or indirectly

¹⁹ *Singer v. Commonwealth of Pennsylvania, Department of Public Welfare*, 381 A.2d 225 (Pa. Comwlth. 1978).

²⁰ *Id.*

²¹ 20 C.F.R. § 416.640(a).

²² *Id.*

(purchasing items). If Mr. C is using these funds as directed, it relieves Ms. C of the need to purchase food, clothing, school supplies, etc., freeing household funds for other household expenses. Ms. C testified that Mr. C was not using the CIB payments for the benefit of the children. If this is the case her remedy lies with the SSA.²³

It is important to note that the situation presented in this instance is not that of a third-party payment, the theory advanced by the division. A third-party payment is also unearned income to the household and occurs when a household seeks to avoid income by asking that money legally obligated to the household bypass the household and be used to directly pay for a household expense.²⁴ Including third-party payments as income prevents diversion of countable household income. For example, a person selling his or her car asks the buyer to pay the household's cable bill by paying the cable company directly or by making the check payable to the cable company, and does not include that amount as income.

In both Ms. C's situation and the third-party payee example, the household has access to the funds. However in Ms. C's situation, the funds are not diverted to a third party because the representative payee stands in the shoes of the beneficiary when receiving the payment, so the CIB payments are the boys' and by regulation, must be used for their benefit. Under *Singer*, because the household has access to the CIB payments, they are unearned income for Ms. C's household.

2. Petition for Dissolution

Ms. C's reading of the petition for dissolution is not unreasonable. However, the paragraph she emphasizes must be read in context of what it is intended to accomplish. The paragraph in question is designed to obtain information that can be used for purposes of calculating child support under Civil Rule 90.3.

²³ *C. G. A. v. State of Alaska*, 824 P.2d 1364 (Alaska 1992) (Remedy for SSI payments not spent on maintenance of beneficiary is with SSA, not state court.).

²⁴ The Food Stamps regulations define third-party payments as follows:
Other third-party payments. Other third-party payments shall be handled as follows: moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income.

7 C.F.R. § 273.9(c)(1)(vii).

In child support it is important to identify whether the obligor, in this case the father, receives social security disability payments that entitle the children to CIB, because CIB received by a child is directly credited against child support owing. If the CIB is more than the support payment, the excess remains with the children. If the CIB is insufficient to cover the amount of child support owing, the court may enter a withholding order.

Child support calculations involving CIB payments are driven by the SSA's preference that the custodial parent be the CIB beneficiary's representative payee.²⁵ In the case of the CIB payments to a minor beneficiary, the Alaska Supreme Court has held that CIB to the obligee child is income to the obligor parent.²⁶ In reaching this conclusion, the court appeared to have two rationales. First, it said that the definition on income in Rule 90.3 "should be interpreted broadly to include benefits with would have been available for support if the family had remained intact."²⁷ Second, the court had already held that CIB to the obligee child should operate as a credit against the child support obligation of the person who earned the CIB, and it reasoned that if the obligor received a credit for the payment, the payment had to be counted as income to avoid a windfall.²⁸

It is with this background that the page provided by Ms. C should be read. The information requested in the petition is required to ensure that child support is correctly calculated when CIB payments are involved. Moreover, the wording of the paragraph recognizes that the CIB payments are paid to the children through a representative payee. "The person paying support currently receives social security or other disability compensation that *includes regular payments to the child(ren)* at least equal to the child support owed each month."²⁹ The petition for dissolution is not an agreement that the CIB payments must go to Mr. C. Rather, the paragraph she identified as requiring payment provides that the children receive CIB payments, and that if child support is greater than the total CIB payments, then the court reserves the right to issue a withholding order against the obligor's income.

²⁵ 20 C.F.R. § 416.622.

²⁶ *Miller v. Miller*, 890 P.2d at 578. 15 AAC 125.030(a), which has been revised since *Miller* and *Fry* were decided, is presumably intended to encompass CIB through subparts (8) or (10), and one might rely on it here. The language of the regulation is so general, however, that it seems best to go back to the Supreme Court cases for specific guidance on the way CIB should be accounted for in child support calculations.

²⁷ *Id.*

²⁸ *Id.* at n.6.

²⁹ Ex. A (emphasis added).

Treating the CIB as income to the obligor for purposes of calculating child support does not preclude the CIB from being countable income to the household for purposes of Food Stamps eligibility. This is because CIB payments received by the custodial house as a credit against child support would be considered countable income to the household, and any excess would be countable income to the household for Food Stamps purposes.

Finally, the representative payee has changed from Mr. C to Mr. C's mother. This is evidence that a payee other than Mr. C can be a CIB representative payee. Ms. C is the custodial parent. It would prudent for her to request appointment as the boys' representative payee.

3. Reliance.

Ms. C has been forthcoming with the division. The division was aware of the CIB payments and it authorized Food Stamps for her household. With her third argument Ms. C is arguing that the division should be estopped from denying her application because she has reasonably relied on Food Stamps to feed herself and her family.

This is an eligibility determination so there is no prejudice to Ms. C because she has not been promised food stamps on an ongoing basis. Each recertification application involves an independent and new eligibility determination.³⁰

4. CIB payments are unearned income to the household they belong to for purposes of Food Stamps.

The CIB is an entitlement to the boys, not Mr. C. The payments are required by regulation to be used for the children's benefit. Household income is income from whatever source unless specifically exempt.³¹ The regulations identify SSDI as a source of unearned income to a household. Unearned income of children who are members of the household is not specifically exempt. SSDI is countable unearned income when the recipient is a member of the household.³² The CIB payments are SSDI income to the children and as such countable unearned income to the household,

³⁰ See *Banks v. Block*, 700 F.2d 292, 296 – 297 (6th Cir. 1983).

³¹ 7 C.F.R. 273.9(b)(1).

³² 7 C.F.R. § 273.9(b)(2).

To the extent that the CIB payments are included in household income, child support should not be included because the CIB payments are child support to the extent child support is owed. To do otherwise would be to count the income twice.

IV. Conclusion

Household income is income from whatever source unless specifically exempt.³³ Income of children who are members of the household is countable household income. SSDI is countable unearned income to the household when the recipient is a member of the household.³⁴ The CIB payments are SSDI income to the children and as such countable income to the household, regardless of whether they are actually received by the household. The division's decision to deny Ms. C's application for Food Stamps because her countable income was over the limit is affirmed.

DATED this 3rd day of October, 2013.

Signed _____
Rebecca L. Pauli
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 10th day of October, 2013.

By: *Signed* _____
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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

³³ 7 C.F.R. § 273.9(b)(1).
³⁴ 7 C.F.R. § 273.9(b)(2).