

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

IN THE MATTER OF:)

S. B. H.)

OAH No. 07-0205-CSS

CSSD No. 001144535

**ORDER GRANTING MOTION
FOR SUMMARY ADJUDICATION**

I. Introduction

On April 17, 2007, CSSD filed a Motion for Summary Adjudication in this child support case. Oral argument on the motion was held on May 3, 2007. Mr. H. did not appear, nor did he provide contact information for the hearing¹; the Custodian, A. D. T., participated by telephone. The Obligee child is J., DOB 00/00/03. David Peltier, Child Support Specialist, represented CSSD. Kay L. Howard, Administrative Law Judge, presided.

II. Facts

This is a paternity action that was initiated by CSSD by serving a Notice of Paternity and Financial Responsibility on Mr. H. on November 13, 2006.² He responded in writing and requested genetic testing.³ Genetic tests were conducted that indicate Mr. H.'s probability of paternity of J. is 99.99%.⁴ On March 14, 2007, CSSD issued an Order Establishing Paternity.⁵ Mr. H. filed an appeal on April 10, 2007. He listed three reasons for the appeal: he is incarcerated, he does not have the funds to pay, and he did not request paternity tests.⁶

CSSD filed the Motion for Summary Adjudication on April 17, 2007. It asserts that because Mr. H. did not dispute the findings regarding his paternity of the child, there are no issues to be resolved in a hearing, and even though he is incarcerated, Mr. H. is still liable for the cost of the paternity testing he requested. CSSD asserted that the motion for summary

¹ Mr. H. was incarcerated at the time this appeal was received. Notice of the date and time of the hearing was sent to him by first class mail at the facility where he is housed. However, he did not contact the OAH to arrange for a telephonic hearing, as provided for in the notice. In his absence, issuance of this decision is authorized by 15 AAC 05.030(j), if the person who requested the hearing fails to appear or participate.

² Exhs. 2 & 3.

³ Exh. 4.

⁴ Exh. 5.

⁵ Exh. 6.

⁶ Exh. 1.

adjudication should be granted because there are no material issues of fact necessitating a hearing and the agency is entitled to judgment as a matter of law.

III. Discussion

CSED correctly asserts it is entitled to summary judgment. CSSD's regulations require that a person served with a Notice of Paternity and Financial Responsibility shall file a response with the agency and either admit or deny paternity.⁷ If the individual denies paternity or requests paternity tests, the parties and the child must submit to genetic testing.⁸

In this case, after receiving the Notice of Paternity and Financial Responsibility, Mr. H. responded to CSSD in writing and checked the box on the form that states: "I am unsure of the paternity of the child listed above, and I request genetic testing to determine paternity." He affixed his signature to the form, dated it November 22, 2006, and returned it to CSSD.⁹ Later paternity tests show Mr. H.'s probability of paternity of the child J. is 99.99%, so on the basis of the test results, CSSD issued an Order Establishing Paternity.¹⁰

Mr. H. also claims he did not request paternity tests, but the form he returned to CSSD was clearly marked in the box for requesting testing. Since he asked for the paternity tests, CSSD reasonably charged him for the service.

Finally, Mr. H. claims he is incarcerated and does not have any money. These facts are irrelevant here. Mr. H.'s status as an inmate does not prevent CSSD from being able to establish his child support obligation. Even incarcerated parents owe a duty to support their children.¹¹

Accordingly, I find there are no material facts in dispute, and there is no reason to hold a hearing on this appeal. As a result, CSSD is entitled to summary judgment as a matter of law. Mr. H.'s appeal should therefore be dismissed.

⁷ 15 AAC 125.217(b).

⁸ 15 AAC 125.217(d).

⁹ Exh. 4.

¹⁰ Exh. 5.

¹¹ *See, Douglas v. State*, 880 P.2d 113 (Alaska 1994).

THEREFORE IT IS ORDERED:

- CSSD's April 17, 2007, Motion for Summary Adjudication is granted;
- Mr. H.'s appeal is dismissed;
- CSSD's March 14, 2007, Order Establishing Paternity is affirmed.

DATED this 12th day of June, 2007.

By: Signed
Kay L. Howard
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 29th day of June, 2007.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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