

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

IN THE MATTER OF:)

W. J. O.)

) OAH No. 07-0227-CSS

) CSSD No. 001027566

DECISION AND ORDER

I. Introduction

This matter involves the Custodian E. M. I.'s appeal of a revised Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. O.'s case on April 18, 2007. The Obligee children are F., DOB 00/00/81, and J., DOB 00/00/83.

The formal hearing was held on June 11, 2007, and July 31, 2007. Ms. I. appeared by telephone during the first session; Mr. O. appeared by telephone during the second session. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on August 10, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based on the record as a whole and after due deliberation, CSSD's revised Administrative Child and Medical Support Order should be affirmed.

II. Facts

A. History and Proceedings

In June 1991, CSSD issued the original child support order in Mr. O.'s case based on the former AFDC needs standards of \$891 per month.¹ Apparently the order was not appealed, nor was it ever modified. On January 24, 2007, Mr. O. filed a Motion to Vacate Default Order.² CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order on April 18, 2007.³ Ongoing child support was not at issue, as F. and J. had both emancipated. The revised order reduced Mr. O.'s total unpaid arrears to \$6816.68 for the period from January 1985 through April 2007.⁴ On May 8, 2007, Ms. I. filed an appeal and requested a

¹ Exh. 1.

² Exh. 2.

³ Exhs. 5, 6 & 7.

⁴ Exh. 7 at pg. 1.

formal hearing.⁵ The hearing was conducted on two separate dates.⁶ Ms. I. appeared at the first proceeding; Mr. O. appeared at the second. A telephone call was placed to Ms. I. for the second hearing, but the person who answered the telephone, who said she was Ms. I.'s daughter, said she was not home.⁷

At the hearing, CSSD explained that Mr. O.'s arrears were recalculated according to his income for each year at issue. According to the agency's calculations, his arrears now total \$6816.68, of which all is owed to the state for public assistance reimbursement. CSSD said there is no calculation of ongoing support because both children have emancipated.

Ms. I. said she filed the appeal because CSSD's audit of the case is incorrect.⁸ She asserted the children were not living with their grandmother when CSSD's records state they were. CSSD reviewed the case notes it obtained from the DPA, which indicated there were five months during which Ms. I. reported to DPA that one or both children had gone to stay with their grandmother in Kotzebue: in January 1986 (F.); from May 1989 through July 1989 (both children); and in July 1990 (F.), a total of five months.

B. Findings of Fact

1. CSSD correctly calculated Mr. O.'s child support obligation from his actual income information, for the period from January 1985 through April 2007;

2. Ms. I. did not meet her burden of proving by a preponderance of the evidence that CSSD's revised Administrative Child Support and Medical Support Order was incorrect.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources."

Under Alaska law, an obligor parent may request that CSSD vacate and reissue a child support order previously calculated from a default income amount, not the person's actual income and ability to pay.¹⁰ He or she must provide the financial information necessary to

⁵ Exh. 10.

⁶ The hearing was conducted over two separate sessions, so the parties' statements are taken from both proceedings.

⁷ The Custodian requested another hearing on August 10, 2007, stating she was at a funeral. That request was not granted because there were no more factual issues to be addressed, as discussed below.

⁸ See Exh. 9.

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ AS 25.27.195(b).

determine the child support obligation for each year at issue.¹¹ After Mr. O. completed the process and provided the necessary income information, CSSD recalculated his child support obligation and issued a revised Administrative Child Support and Medical Support Order.¹²

The person who filed the appeal, in this case, Ms. I., has the burden of proving by a preponderance of the evidence that the agency's revised Administrative Child Support and Medical Support Order is incorrect.¹³

Ms. I. filed the appeal, but her appeal issues focus solely on whether one or both children were in her home during all of the time frames reflected in the revised order and audit that accompanied it. These issues cannot be resolved in the formal hearing process. The administrative law judge's responsibility is to determine whether CSSD calculated Mr. O.'s child support accurately and whether the revised Administrative Child Support and Medical Support Order is correct.¹⁴ If one or both of the children were in Ms. I.'s home during all of the time frames at issue, or they spent some time at their grandmother's home, this merely goes to the issue whether the arrears for any one month are owed to Ms. I. or to the State of Alaska for public assistance reimbursement.¹⁵ Ms. I. must address that issue with CSSD, but at most, only five months are involved and the total amount involved is not high.

IV. Conclusion

Ms. I. did not meet her burden of proving CSSD's revised Administrative Child Support and Medical Support Order was incorrect. For the years in question, Mr. O. provided evidence of his income, which CSSD used to recalculate his child support obligation. Whether Ms. I. or the State of Alaska is the correct payee during any specific month is an issue that must be taken up with the agency. Thus, CSSD's revised Administrative Child Support and Medical Support Order should be affirmed.

V. Child Support Order

- CSSD's April 18, 2007, revised Administrative Child Support and Medical Support Order is affirmed.

¹¹ 15 AAC 125.121(b).

¹² Exh. 7.

¹³ 15 AAC 05.030(h).

¹⁴ See AS 25.27.180.

¹⁵ See AS 25.27.120.

DATED this 4th day of October, 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 25th day of October, 2007.

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

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