

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

IN THE MATTER OF:)

A. A. P.)

) OAH No. 07-0230-CSS

) CSSD No. 001139606

**ORDER AND DECISION GRANTING
MOTION FOR SUMMARY ADJUDICATION**

I. Introduction

On April 18, 2007, the Obligor, A. A. P., appealed a Notice of Action on Request for Relief from Agency Administrative Order that CSSD Director John Mallonee issued on March 16, 2007. CSSD filed a Motion for Summary Adjudication in response to Mr. P.'s appeal. Oral argument on the motion was held on May 16, 2007. Mr. P. appeared in person; the Custodian of record, K. M., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD.

James T. Stanley, Administrative Law Judge, Alaska Office of Administrative Hearings (OAH), conducted the hearing. Based on the record as a whole and after due deliberation, it is concluded Director Mallonee's order should be affirmed.

II. Facts

On June 23, 2006, CSSD issued an Administrative Child Support and Medical Support Order that set Mr. P.'s child support arrears at \$4124 for the period from October 1, 2005 through February 28, 2006.¹ Mr. P., a member of the military, appealed that order and a hearing was put on the calendar for August 18, 2006, before Administrative Law Judge Kay L. Howard of the Office of Administrative Hearings. After the hearing, Judge Howard issued a proposed decision and order in Mr. P.'s case on September 26, 2006. She granted Mr. P.'s appeal and relieved him of his child support obligation for the one-month period of time he lived in the home after returning from a deployment out of the country.² The deadline to respond to the proposed decision and order was October 9, 2006. No responses were received, so on behalf of the Commissioner of the Department of Revenue, CSSD's umbrella state agency, Judge Howard adopted the proposed decision and order on October 12, 2006.

¹ Mr. P.'s ongoing child support obligation as of March 1, 2006, has been set by court order. Exh. 1 at pg. 1.

² Exh. 4.

On December 29, 2006, Mr. P. filed a request for relief with CSSD Director John Mallonee.³ On March 16, 2007, Director Mallonee denied Mr. P.'s request for relief and the Obligor appealed.⁴ The appeal was referred to the Office of Administrative Hearings pursuant to AS 44.64.030(18) and CSSD's regulation 15 AAC 125.125(f).

III. Discussion

Mr. P.'s request for relief asserts that he should not have been ordered to pay child support from October 1, 2005, through mid-January, 2006, because he was deployed and he was already fully supporting his child by paying all of the household bills such as the mortgage and utilities during his absence. Director Mallonee denied his request for relief on the basis that the issues Mr. P. raised in his request had already been presented to the administrative law judge in his earlier appeal and at the first formal hearing.

Appeals in child support cases are heard by the Office of Administrative Hearings.⁵ After a child support appeal is received, it is assigned to an administrative law judge to hold a hearing and issue a proposed decision and order.⁶ If none of the parties objects to the proposed decision within the specified period of time, it is adopted as a final order and it becomes the final agency decision.⁷ A party wanting judicial review of a final agency decision must file the appeal in the Superior Court.⁸

CSSD provides in its regulations a method whereby a party to child support cases may file a "request for relief from agency administrative orders after the appeal deadline."⁹ This regulation is not designed to be used to obtain further review of a decision issued by an administrative law judge after a hearing. Rather, this regulation's primary use is to correct mostly mistakes that become apparent after the deadline has passed to fix them. There is no provision in this regulation for the director to review a decision issued by an administrative law judge. That is the court's role and responsibility.

³ Exh. 6.

⁴ Exhs. 7 & 8.

⁵ AS 44.64.030(a)(18).

⁶ AS 44.64.060(d).

⁷ AS 44.64.060(e)(1). In child support cases, the "agency" at issue is the Department of Revenue; CSSD is one of the divisions within that department.

⁸ AS 22.10.020(d).

⁹ 15 AAC 125.125.

As stated in CSSD Director Mallonee's order denying Mr. P.'s request for relief, Mr. P. presented the same issues to the director that he did during the appeal and hearing process. Even if the director had believed the administrative law judge's decision was incorrect, the director did not have the authority to change the order.

IV. Conclusion

CSSD's motion should be granted. There is no relief available to Mr. P. through a request for relief filed with the CSSD Director. If he wants to appeal the proposed decision and order issued in his case on September 26, 2006, and adopted as the final agency administrative order on October 12, 2006, he must file his appeal in court.

THEREFORE IT IS ORDERED:

1. CSSD's motion for summary adjudication is GRANTED;
2. CSSD Director John Mallonee's Notice of Action on Request for Relief from Agency Administrative Order is affirmed.

DATED this 24th day of May, 2007.

By: Signed
James T. Stanley
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 11th day of June, 2007.

By: Signed
Signature
James T. Stanley
Name
Administrative Law Judge
Title

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