

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

In the Matter of)	
)	
H P. U. K)	OAH No. 18-1082-CSS
_____)	Agency No. 001157581

DECISION AND ORDER

I. Introduction

H K appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 21, 2018. The modification added a third child, O, to Mr. K’s existing support order for two older children, B and L. It set Mr. K’s ongoing support amount at \$95 per month for three children, effective July 1, 2018. It also set pre-order arrears totaling \$1,734 in O’s case, for the period from June 2013 through June 2018. The custodian of record is K N.

Mr. K argued that his support obligation should be suspended for months in which O and her siblings did not live with their mother, and he should receive a credit for direct child support payments he has made. These issues must be addressed through a separate process; they cannot be resolved in this appeal.

With regard to the modified child support order, CSSD properly added O to Mr. K’s existing support order, and it correctly calculated his modified child support obligation. Accordingly, the order is affirmed.

II. Facts

Mr. K and custodian of record K N are the parents of three children: B, age 11, L, age 9, and O, age 5.¹ Mr. K did not contest paternity of O. In July 2013, CSSD established Mr. K’s support obligation for B and L, setting his ongoing amount at \$50 per month for two children.² When it issued the child support order in July 2013, CSSD was not aware that Ms. N had recently given birth to a third child. O was born in June 2013.³

CSSD initiated a modification review when it received information showing that O was enrolled in a public assistance grant. CSSD records show that Native Temporary Assistance for Needy Families (NTANF) was paid on O’s behalf starting in June 2013.⁴

On June 8, 2018, CSSD served each parent with a Notice of Adding a Child to a Support

¹ Exhibit 1.
² *Id.*
³ Exhibit 3.
⁴ See Exhibit 3, p. 13.

Order and Petition for Modification of Administrative Support Order.⁵ CSSD did not receive income information from Mr. K. On September 21, 2018, it issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.

The order increased Mr. K's ongoing support amount to \$95 per month for three children, effective July 1, 2018. CSSD calculated this obligation based on Mr. K's 2017 commercial fishing income plus the PFD.⁶ It also set pre-order arrears for O totaling \$1,734 for the period from June 2013 through June 2018. This determination was based on Mr. K's commercial fishing income, any wages from employers, and the PFD.⁷

Mr. K appealed, asserting that Ms. N does not have custody of any of the children and that he made direct payments of child support to Ms. N when she was exercising custody.⁸ He submitted a tribal court order dated June 8, 2018, awarding temporary custody of all three children to their grandmother, Q N.⁹

The hearing took place by telephone on November 14, 2018. Mr. K represented himself and testified on his own behalf. Ms. N was contacted by telephone, but she opted not to participate. Child Support Specialist Patrick Kase represented CSSD. The hearing was recorded. All submitted documents were admitted to the record, which closed at the end of the hearing.

III. Discussion

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order is incorrect.¹⁰ Mr. K filed this appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated September 21, 2018 is incorrect.

During the hearing, Mr. K confirmed that he does not contest the addition of O, CSSD's calculation of his ongoing child support amount, or the calculation of pre-order arrears for O. His objections are that Ms. N should not receive child support payments when she did not have custody of the children, and he should receive a credit for the direct child support payments he has already made. He alleged that Ms. N has been receiving public assistance on behalf of the children by misrepresenting herself as their custodian.

⁵ Exhibit 2.

⁶ Exhibit 3. His expected 2018 income did not result in a material change of circumstances, so the 2017 calculation was carried into 2018 and ongoing.

⁷ The calculations resulted in different monthly arrears amounts for 2013, 2014, 2015-2016, and 2017-2018. *See* Exhibit 3, pp. 13-14.

⁸ Exhibit 4.

⁹ Exhibit 4, p. 2-3.

¹⁰ 15 AAC 05.030(h).

A. Suspension of Support Obligation

Mr. K explained that Ms. N has not cared for the children for some of the months covered by the modified child support order. The tribal court order supports this claim for June 2018 and ongoing. Mr. K indicated that he also has other evidence, including other court orders, showing that Ms. N did not exercise custody in prior months.

As discussed during the hearing, this issue cannot be resolved in this appeal.¹¹ Within certain limits, CSSD can suspend Mr. K's child support obligation for periods of time in which the children were not with the custodian of record. However, CSSD regulations require a separate administrative review process.¹² Mr. K is encouraged to communicate with his CSSD enforcement caseworker about this issue.

CSSD's hearing representative also explained that CSSD cannot suspend Mr. K's obligation for months in which public assistance was paid to Ms. N on behalf of the children. Therefore, if Mr. K believes public assistance was incorrectly paid based on fraud or misrepresentation, he can initiate an investigation through the tribal assistance program that issued the public assistance benefits.¹³ If the program determines that benefits were incorrectly paid for particular months, CSSD can then administratively adjust Mr. K's arrears for those months.

B. Credit for Direct Payments

Similarly, within certain limitations, CSSD can give an obligor credit for direct child support payments made to the custodial parent, if the paying parent provides clear and convincing evidence that the payment was made and that both parents intended it to be a direct payment of child support.¹⁴ However, limitations apply when public assistance has been paid on behalf of the children.¹⁵ Again, Mr. K must pursue this issue with his CSSD caseworker; it cannot be resolved through an administrative appeal.¹⁶

IV. Conclusion

Mr. K does not dispute the addition of O to his case, the calculation of his arrears for O, or the ongoing child support amount for three children. Therefore, the child support order CSSD dated September 21, 2018 is affirmed.

¹¹ 15 AAC 125.870(h).

¹² 15 AAC 125.870(a)(1), (g).

¹³ Mr. Kase indicated that this was the Cook Inlet Tribal Consortium or CITC.

¹⁴ 15 AAC 125.465(a).

¹⁵ 15 AAC 125.465(f).

¹⁶ 15 AAC 125.465(c), (d).

Mr. K raised two issues that may merit some adjustments to his case, but they cannot be resolved through the formal appeals process. He is encouraged to follow-up with the tribal assistance program regarding his concern that Ms. N received public assistance based on custody she was not in fact exercising. He can follow up with his CSSD caseworker regarding his request for a direct payments credit and for suspension of his support obligation for any months in which Ms. N was not receiving public assistance.

V. Child Support Order

- The Modified Administrative Child and Medical Support Order dated September 21, 2018, is affirmed and remains in full force and effect.

DATED: November 16, 2018.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 13th day of December, 2018.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]