

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

In the Matter of	)	
	)	
S T. U	)	OAH No. 19-0149-CSS
_____	)	Agency No. 001228616

**DECISION AND ORDER**

**I. Introduction**

The case involves the establishment of S U’s support obligation for his son, S, Jr., who was placed in state custody on August 30, 2018. After an Administrative Review Hearing, the Child Support Services Division (CSSD) issued an Amended Administrative Child and Medical Support Order that set Mr. U’s support obligation at \$507 for the months of August 2018 through December 2018. The obligation decreased to \$296 per month starting January 1, 2019. However, CSSD deferred or suspended the obligation effective November 1, 2018. It remains deferred as long as S, Jr. is living in an unpaid foster placement and the placement does not request CSSD services.

Mr. U does not dispute the calculated support amounts. He argues that, because his son was taken into state custody on August 30, 2018, he should not be required to pay child support for the full month of August.

This decision upholds the Amended Administrative Child and Medical Support Order, including the pre-order arrears start date of August 1, 2018. Applicable law does not allow CSSD to pro-rate support on a daily rather than monthly basis. In addition, when it sets pre-order arrears, the agency is required to start with the month in which state assistance was provided or the child was placed in state custody.

**II. Facts and Proceedings**

S U, Sr. lives in Anchorage. He is the father of S, Jr., age 10. Mr. U’s name is on S, Jr.’s birth certificate; he did not contest paternity.

The Office of Children’s Services (OCS) assumed custody of S, Jr. on August 30, 2018.<sup>1</sup> The child lived in a paid foster care placement from August 30<sup>th</sup> to October 27, 2018, when he was admitted to Hospital A. He was discharged from the hospital on January 24, 2019. S, Jr.

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<sup>1</sup> Exhibit 5, pp. 2-3; U testimony.

briefly lived in an emergency foster home until he moved in with his paternal grandparents on February 5, 2019. They care for him as an unpaid relative foster placement.<sup>2</sup>

CSSD received a request to establish a child support order effective August 30, 2018, because that is when the state took custody of S, Jr.<sup>3</sup> On September 15, 2018, CSSD issued an administrative order requiring Mr. U to provide his financial information, so CSSD could establish his support obligation.<sup>4</sup> On January 8, 2019, it issued an Administrative Child Support and Medical Support Order based on the incomplete income information available to it.<sup>5</sup> Mr. U requested an Administrative Review Hearing and provided his financial information.<sup>6</sup>

On January 31, 2019, CSSD issued the Administrative Review Hearing Decision and Amended Administrative Child and Medical Support Order at issue in this appeal.<sup>7</sup> The amended child support order set Mr. U's 2018 obligation based on his actual 2018 income, which resulted in a \$507 monthly obligation for August through December 2018.<sup>8</sup> To calculate the 2019 and ongoing obligation, CSSD averaged Mr. U's actual income over the last three years. After applicable deductions, this income resulted in a \$296 monthly support obligation, effective January 1, 2019 and ongoing.<sup>9</sup> However, CSSD suspended the obligation for November and December 2018, because the child was hospitalized throughout those months.<sup>10</sup>

Mr. U appealed.<sup>11</sup> The formal administrative hearing took place by telephone on March 6, 2019. Mr. U represented himself and testified during the hearing. Child Support Specialist Brandi Estes represented CSSD and testified on its behalf. The hearing was audio-recorded. All submitted documents were admitted to the record, which closed at the end of the hearing.

During the hearing, Ms. Estes clarified that CSSD has deferred Mr. U's support obligation, effective January 1, 2019, because S, Jr. is living in an unpaid placement with

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<sup>2</sup> Exhibit 5.

<sup>3</sup> Estes testimony; Exhibit 5, p. 3; CSSD pre-hearing brief.

<sup>4</sup> Exhibit 1. Mr. U did not respond to this order. *See* Exhibit 2, p. 4.

<sup>5</sup> Exhibit 2. The initial support order set Mr. U's ongoing and pre-order arrears obligation at \$948 per month.

<sup>6</sup> Exhibit 3.

<sup>7</sup> Exhibit 4.

<sup>8</sup> *See* Exhibit 4, p. 11.

<sup>9</sup> Exhibit 4, p. 10.

<sup>10</sup> *See* Exhibit 4, pp. 8, 12. S, Jr.'s hospitalization is considered an unpaid placement for purposes of Mr. U's obligation to pay child support to the State of Alaska.

<sup>11</sup> Exhibit 5.

relatives.<sup>12</sup> As long as the child’s grandparents have physical custody, are unpaid, and do not request CSSD’s services, the obligation will remain deferred.<sup>13</sup>

### III. Discussion

As the person who filed the appeal, Mr. U bears the burden to show by a preponderance of the evidence that CSSD made a mistake when it issued the Amended Administrative Child and Medical Support Order on January 31, 2019.<sup>14</sup>

Mr. U does not object to CSSD’s determination of his income or the monthly child support amounts it calculated for 2018 or for 2019 and ongoing. He agreed he should not be liable to pay any child support through CSSD starting November 2018 and continuing to the present. Mr. U believes S, Jr.’s current placement is stable, so he likely will not be required to pay child support through CSSD for the foreseeable future. He argued he should not have to pay a full month of support for August 2018, since S, Jr. was only in state custody for two days that month.

A parent is obligated both by statute and at common law to support his or her children.<sup>15</sup> In cases establishing a new support obligation, CSSD collects child support from the time the custodial parent requested child support services or the date public assistance or foster care was initiated on behalf of the child.<sup>16</sup> Because foster care was initiated in this case in August 2018, that is the month Mr. U’s obligation to support S, Jr. through CSSD begins.

Nothing in CSSD’s statutes or regulations contemplates pro-rating the child support amount on a daily basis. Instead, existing law requires that child support be set and enforced on a monthly basis, and CSSD’s practice is consistent with that requirement.<sup>17</sup> Thus, when a duty of support exists for any part of a given month, CSSD assesses the full monthly amount.

In setting the start date for Mr. U’s pre-order arrears, CSSD followed the directive of 15 AAC 125.105(a)(1), which applies when the support order is established because the child is in state placement or state-sponsored foster care. In such situations, the regulation directs CSSD to establish arrears “beginning as of the first month in which state assistance was provided on

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<sup>12</sup> See 15 AAC 125.870(d).

<sup>13</sup> See *id.*; Estes testimony.

<sup>14</sup> 15 AAC 05.030(h).

<sup>15</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>16</sup> 15 AAC 125.105(a)(1)-(2).

<sup>17</sup> See Civil Rule 90.3; 15 AAC 125.105(a); Exhibit 4, p. 12.

behalf of the child or the first month of state placement.”<sup>18</sup> There is no discretion on this point. The amended child support order correctly applied this regulation.

In cases involving the modification of an existing child support order, the Alaska Supreme Court has held that the effective date of a modified support order can be delayed when there is good cause to do so.<sup>19</sup> The language of 15 AAC 125.105(a)(1) strongly suggests that CSSD has no flexibility to delay the start of pre-order arrears for good cause in an establishment case, particularly when public assistance has been provided on behalf of the child during the month in question.

Even if this was an option, the facts of this case would not show good cause. At present, this is an arrears-only matter involving three months: August, September, and October 2018. Mr. U’s total liability for those months is \$1,521, plus a small amount of interest.<sup>20</sup> Though his financial circumstances are strained, Mr. U’s PFD and wage history show he should be able to satisfy this obligation.<sup>21</sup>

#### **IV. Conclusion**

CSSD did not err when it issued the Amended Administrative Child and Medical Support Order dated January 31, 2019. The order is therefore affirmed and remains in full force and effect.

#### **V. Child Support Order**

- The Amended Administrative Child and Medical Support Order dated January 31, 2019 remains in full force and effect.

DATED: March 21, 2019.

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

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<sup>18</sup> 15 AAC 125.105(a)(1).

<sup>19</sup> *State v. Dillon*, 977 P.2d 118 (Alaska 1999); *State v. Wise*, 122 P.3d 212 (Alaska 2005).

<sup>20</sup> Estes testimony.  $\$507 \times 3 = \$1,521$ .

<sup>21</sup> Exhibits 4, 6. Mr. U’s 2019 income to-date is below his 2018 wages. The evidence does not suggest this is a permanent situation, however, or that Mr. U could not supplement his income through new work. In addition, CSSD has deferred the support obligation for January and February 2019, though it appears S, Jr. spent at least a day in an emergency foster care placement in each of those months.

## 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 5<sup>th</sup> day of April, 2019.

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.]