

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

IN THE MATTER OF:)

P. D. W.)

OAH No. 07-0335-CSS

CSSD No. 001123909

**ORDER GRANTING MOTION
FOR SUMMARY ADJUDICATION**

I. Introduction

On June 7, 2007, CSSD filed a Motion for Summary Adjudication in this child support case. Oral argument on the motion was held on June 25, 2007. The Custodian, J. A. M., filed the appeal but did not participate. The Obligor parent, Mr. W., also did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on July 5, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the proceeding. Based on the record as a whole, and after due deliberation, it is concluded that CSSD's motion for summary adjudication should be granted.

II. Facts

On February 4, 2007, Mr. W. filed a Motion to Vacate a Default Order with CSSD.¹ On May 21, 2007, CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order. The revised order set Mr. W.'s arrears at \$4360.07 for the period from January 1, 2003 through January 31, 2005.² Later time periods were not adjusted because CSSD determined a default review was no longer available to him after January 2005.³

Ms. M. filed an appeal and requested a formal hearing on May 29, 2007.⁴ CSSD filed the Motion for Summary Adjudication and oral argument on the motion was convened on June 25, 2007.

¹ Exh. 1.

² Exh. 4.

³ Mr. W.'s child support order was no longer based on a default amount, as of February 1, 2005. His child support had subsequently been modified to \$322 per month, effective February 1, 2005. Exh. 6 at pg. 1. Also, on September 6, 2006, the Superior Court issued an order for Mr. W. to pay ongoing child support in the amount of \$317.73 per month, effective October 1, 2006. Exh. 8 at pg. 2.

⁴ Exh. 10.

III. Discussion

Ms. M. filed an appeal and requested a formal hearing, but she failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a decision if the requesting party fails to appear.

A parent is obligated both by statute and at common law to support his or her children.⁵ 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."

When an obligor parent requests CSSD to conduct a review of a child support order based on a default income amount, he or she must provide the financial information necessary to determine the parent's actual income and child support obligation for each year at issue.⁶ Mr. W. submitted income information in the form of tax returns and child support guidelines affidavits.⁷ CSSD used those documents to calculate his support obligation for each year at issue, namely for the period from January 2003 through January 2005.⁸

The person who filed the appeal, in this case, Ms. M., 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. Ms. M. appeared to be contesting shared custody, as her appeal states she and Mr. W. did not exercise shared custody until April 2007. Ms. M. may have been mistaken in her belief that CSSD based the child support calculation on shared custody, because an examination of the documents in the record indicates the calculations CSSD prepared are based on Ms. M. having primary custody.⁹ There is no shared custody calculation in the record for this appeal.

IV. Conclusion

Ms. M. did not meet her burden of proving CSSD's revised Administrative Child Support and Medical Support Order was incorrect. Therefore, it should be affirmed as issued by the agency.

⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁶ 15 AAC 125.121(b).

⁷ Exh. 3.

⁸ Exh. 4.

⁹ See Exhs. 5 & 7.

V. Child Support Order

- CSSD's May 21, 2007, revised Administrative Child Support and Medical Support Order is affirmed, and stands as issued.

DATED this 25th day of July, 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 14th day of August, 2007.

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

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