

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

IN THE MATTER OF:

M B. D R

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OAH No. 07-0420-CSS
CSSD No. 001145769

DECISION AND ORDER

I. Introduction

M B. D R has appealed an Administrative Review Decision which was issued on June 4, 2007 in conjunction with an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (“CSSD”) on June 4, 2007.

The formal hearing in this case was held on August 6, 2007 before Administrative Law Judge (“ALJ”) J T. Stanley. Mr. D R appeared in person. K L. D R, wife of Mr. D R, appeared by telephone. Andrew Rawls, Child Support Specialist, appeared in person for CSSD. Exhibits 1 through 10 were admitted into evidence. The hearing was recorded. The record closed on August 17, 2007.

II. Facts¹

A. History

The parties are the parents of three children: J D R (DOB 00/00/94); C D R (DOB 00/00/96); and, M D R (DOB 00/00/02). Mr. D R moved out of the family home on or after August 8, 2006. He returned to the family home on April 1, 2007. A divorce action was initiated in 2006, but was dismissed by mutual agreement in 2007. To the extent that his income² would allow, Mr. D R continued to pay family obligations and expenses while living outside of the family home. In mid-December, 2006, Mr. D R’s living expenses increased and he was unable to pay all family expenses (mortgages, utilities, etc.). In January, February, and March of 2007, Ms. D R contributed \$600 each month to family expenses. Beginning in October

¹ The facts are derived from the evidence and the testimony, unless another source is cited.

² Mr. D R had adjusted annual income for 2006 of \$42,918.68. See Exhibit 5, p.7.

2006 and ending in March 2007, Mr. D R paid child support in the amount of \$430 per month directly to the custodian.

B. Material Facts

Ms. D R applied for and began receiving \$1180 per month from the Alaska Temporary Assistance Program (“ATAP”) in October, 2006. These payments ceased at the end of March, 2007. Ms. D R’s receipt of the ATAP public assistance monies allowed her to give \$600 per month to Mr. D R in January, February, and March, 2007. By April 1, 2007, the family was again living together as one intact unit.

Ms. D R’s application for public assistance included an assignment³ to CSSD of child support due from Mr. D R to his children. Because Ms. D R was receiving public assistance for her family and because Mr. D R has a duty to support his children, CSSD issued an Administrative Child Support and Medical Support Order on April 11, 2007. At the time this order was issued, CSSD did not know that Mr. DR had rejoined his family. In their Request(s) for an Administrative Review,⁴ Mr. and Mrs. D R each disclosed to CSSD that the family was reunited effective April 1, 2007, and that during his absence from the home, Mr. D R has made direct payments to the custodian in the total amount of \$2580; CSSD does not oppose giving Mr. D R credit in the amount of \$2580 against his accrued child support obligation.

III. Discussion

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 from his or her "total income from all sources." At any time after an ongoing child support obligation has been established, CSSD may issue a notice and finding of financial responsibility that sets the child support obligation for periods before the effective date of the ongoing child support obligation.⁶ An obligor is liable to the state for the amount of public assistance granted to a child to whom the obligor owes a duty of support.⁷ Arrears begin accruing as of the first month in

³ Exhibit 8, p. 3.

⁴ Exhibit 2. Mr. and Mrs. D R each filed a request for administrative review.

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

⁶ 15 AAC 125.105(a).

⁷ AS 25.27.120(a) referring to AS 47.07(medical assistance for needy persons) and AS 47.27(Alaska Temporary Assistance Program for eligible families).

which state assistance was provided on behalf of the child (or children).⁸ When calculating child support arrearages, CSSD will give credit for payments actually made by the obligor directly to the custodian.⁹ The amount of credit given cannot exceed the amount of child support that is charged because of the payment of assistance from the state.¹⁰

Mr. D R incorrectly believes that he is liable only for a total of \$1800 to the state. Under the applicable law, Mr. D R is liable for child support in the amount of \$1180 per month, based upon his income. The child support amount of \$1180 for three children is not disputed. Mr. D R does raise an issue as to whether he has received proper credit for his direct child support payments totaling \$2580.

The general position of Mr. D R is that he continued to pay family expenses as best he could while living separate and apart from his family, and therefore he should not be liable for any money except the \$1800 that his wife gave to him. The short response to Mr. D R's argument is that the state paid ATAP monies to his family in his absence which was the substitute for the child support due his children. Having paid out the public assistance monies, CSSD is entitled to recoup from him the funds paid by the state.

IV. Conclusion

Mr. D R has not met his burden of proving by a preponderance of the evidence that CSSD's child support and arrearage calculations were incorrect. However, Mr. D R has established that he is not liable for ongoing child support from and after July 1, 2007, as alleged by CSSD; in fact, Mr. D R is not liable for child support from and after April 1, 2007 (unless he left the family unit after that date). The child support amount calculated in its Amended Administrative Child Support and Medical Support Order¹¹ is correct, but he is liable for repayment of public assistance (paid in lieu of child support) beginning October 1, 2006 and ending March 31, 2007, totaling \$7080, minus credit in the amount of \$2580 for direct payments he made to the custodian. Accordingly, Mr. D R is liable for net arrearages in the amount of \$4500 due July 1, 2007, but payable in monthly installments as allowed by 15 AAC 125.545.

⁸ 15 AAC 125.105(a)(1).

⁹ 15 AAC 125.105(b).

¹⁰ 15 AAC 125.105(d).

¹¹ Exhibit 5, pp. 1-5.

V. Child Support Order

Mr. D R is liable for child support in the amount of \$1180 per month for the period from October 1, 2006 through March 31; 2007. Mr. D R is entitled to a credit in the total amount of \$2580

DATED this 13th day of September, 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 4th day of October, 2007.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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