

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

IN THE MATTER OF)	OAH No. 07-0606-CSS
J. C. E.)	CSSD No. 001146948
)	
_____)	

CORRECTED DECISION AND ORDER¹

I. Introduction

On October 24, 2007, a formal hearing was held to consider the child support obligation of J. C. E. (Obligor) for the support of his child, J. (Obligee).² Mr. E. participated in the hearing. The custodial parent, R. D. L., also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on October 31, 2007.

This case is Mr. E.'s appeal of the Division's order establishing his monthly child support obligation for his child, J.. Based on the evidence in the record, Mr. E.'s arrears for March 2007 through August 2007 should be set as previously calculated at \$291 per month, but beginning in September of 2007 and ongoing, Mr. E.'s child support obligation should be set at the monthly amount in the Division's latest calculations at Exhibit 10. These calculations result in a monthly child support amount of \$372. Mr. E. should receive a total credit of \$1,342.72 for the direct and in-kind payments of child support he made to Ms. L..

II. Facts

In March of 2007, Ms. L. requested child support services for her child, J..³ Paternity is

¹ In the Matter of J. C. E., Child Support Decision and Order, was adopted and distributed to the parties. On February 11, 2008, the Division filed a motion for reconsideration asking for a correction of a typographical error in the Decision and Order. The Division correctly pointed out that there was a typographical error in the order section on page 5. The order left out child support for the month of January 2008. Therefore, this corrected decision is issued in place of the original. The correction appears in bold italic type. Additionally, some non-substantive typographical errors were also corrected. This corrected decision is issued under the authority of 2 AAC 64.350(b).

² The hearing was held under Alaska Statute 25.27.170.

³ Division's Pre Hearing Brief, page 1 & Ex. 2, page 1.

not in dispute.⁴ Mr. E. is named as J.'s father on J.'s birth certificate.⁵

The Division served Mr. E. with an Administrative Child and Medical Support Order on June 28, 2007.⁶ Mr. E. requested an administrative review of that order.⁷

The Division issued an Amended Administrative Child and Medical Support Order on August 20, 2007.⁸ The Division set Mr. E.'s monthly ongoing child support for J. at \$291. The order also established arrears beginning in March of 2007. Mr. E. requested a formal hearing.⁹

At the hearing and prior to the hearing, Mr. E. provided information regarding his income.¹⁰ After the hearing, as requested, the Division provided new calculations based on this information.¹¹

At the hearing, Mr. E. asserted that he had custody of J. for the months March 2007 through May of 2007. Mr. E. asserted had made direct and in-kind payments of child support to Ms. L. during the period covered by this order as follows:

- in February of 2007-- a payment of \$350 in cash for a plane ticket;
- in March of 2007 -- in-kind contributions of \$152.94 that he paid for a car seat and \$57.34 for toys;
- in April of 2007 -- in-kind contributions of \$163 and \$60.49 that he paid for clothing;
- in May of 2007 -- \$500 cash for J.'s birthday and his mom gave \$300 cash;
- in June of 2007 -- no direct or in-kind payments;
- in July of 2007 -- an in-kind payment of \$58.95 in diapers;
- in August of 2007-- a check for \$100;
- in September of 2007 -- a check for \$200;

⁴ Division's Pre Hearing Brief, page 1 & Recording of Hearing.

⁵ Division's Pre Hearing Brief, page 1.

⁶ Ex. 3.

⁷ Ex. 4.

⁸ Ex. 7.

⁹ Ex. 7.

¹⁰ Ex. A & B & Recording of Hearing.

- and in October of 2007 -- a \$50 ATM cash withdrawal.¹²

Ms. L. testified that between March and April of 2007 that J. only spent time with Mr. E. during the daytime except for one or two overnights when Ms. L. spent the night at the house as well. Ms. L. confirmed that Mr. E. had made the direct payments and in-kind contributions that he claimed.¹³

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations at exhibit 10 and the information used in these calculations are correct and most accurately reflect Mr. E.'s earnings beginning in September of 2007.¹⁴ Based on the evidence in the record, I also find that it is more likely than not that Mr. E. did not live with J. after February of 2007, but Mr. E. did make a total of \$1,342.72 in direct payments of child support for J. during the time period covered by this order.¹⁵ This amount does not include the \$350 payment by Mr. E. that was made in February of 2007 or the \$300 payment that was made by Mr. E.'s mother in June of 2007.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. E., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁶

Mr. E. showed that his income beginning in September of 2007 was more than the amount the Division had used to calculate his monthly child support for J. at \$291. Mr. E. was employed in a new job working at Wal-Mart for \$12 per hour, full-time since September of 2007. Mr. E.'s testimony regarding the custody situation between March and June of 2007 was not as credible as that of Ms. L.. Mr. E. has some trouble with English, so it is not clear that he understood exactly what he was being asked. Ms. L. appeared to remember more clearly where J. spent both his nights and his days during the period in question. Furthermore, as the Division

¹¹ Division's Post Hearing Brief & Ex. 10.

¹² Recording of Hearing.

¹³ Recording of Hearing.

¹⁴ Recording of Hearing & Ex. 12.

¹⁵ Recording of Hearing & Ex. 10.

¹⁶ Alaska Regulation 15 AAC 05.030(h).

points out in its post hearing brief, it is more plausible that J. was in Ms. L.'s custody during these months given the undisputed fact that Mr. E. was making in-kind and direct payments of child support to Ms. L..

Based on the information provided by Mr. E., the Division recalculated his monthly child support from September 2007 forwarded. The Division used the updated information on Mr. E.'s earnings at his new job to estimate that his projected adjusted annual income will be \$26,614.¹⁷ The Division used this updated earnings information to calculate Mr. E.'s ongoing monthly child support amount at \$372.¹⁸

Credits for direct payments of child support are allowed even after an obligor has a child support order and has been notified that he should pay through CSSD, as long as the payments are not for a period when the children were receiving public assistance and the obligor provides clear and convincing evidence that the payments were made.¹⁹ These strict rules that apply to credits for direct and in-kind payments of child support do not all apply to payments made prior to the establishment of a child support order.²⁰

The Division served Mr. E. with an Administrative Child and Medical Support Order on June 28, 2007.²¹ Mr. E. should receive a total of \$1,342.72 for the direct and in-kind payments of child support he made for J. during the time period covered by this order. There is no real dispute that these payments were made and there appears to be English language issues that may have led Mr. E. to fail to understand after June of 2007 that he was suppose to make all his child support payments through the Division.

Mr. E. should not receive a credit for the \$350 payment that was made in February of 2007, because that payment was made prior to the effective date of this order. Mr. E. is not being charged child support arrears for the month of February of 2007. Mr. E. should not receive a credit for the \$300 payment that his mother made in June of 2007. That payment appears to have

¹⁷ Ex. A, B & 10.

¹⁸ Ex. 10.

¹⁹ Alaska Regulation 15AAC 125.465.

²⁰ *Ogard v. Ogard*, 808 P.2d 815, 817 (Alaska 1991) & Alaska Regulation 15AAC 125.105(b) & (c).

²¹ Ex. 2.

been a birthday present for J. from J.'s grandmother rather than a direct payment of child support from his father, Mr. E..

IV. Conclusion

Mr. E.'s monthly child support should be set at of \$291 for March through August of 2007, and \$372 per month from September of 2007 forward. Mr. E. should receive a total of \$1,342.72 in credits for the direct and in-kind payments of child support he made to Ms. L..

V. CHILD SUPPORT ORDER

The Division's Amended Administrative Child and Medical Support Order issued on August 20, 2007 is amended as follows, but all other provisions of that order remain in effect:

1. Mr. E.'s ongoing child support for J. is set in the monthly amount of \$372, effective February 1, 2008.
2. Mr. E.'s child support arrears for J. are set in the monthly amount of \$372 for *the month of January 2008* and the months of September through December of 2007; and \$291 per month for the months of March through August of 2007.
3. The Division shall give parties the appropriate credit or debit for any out-of-pocket expenses for providing health insurance coverage for J..

DATED this 22nd day of February, 2008.

By: Signed

Mark T. Handley
Administrative Law Judge

