

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

IN THE MATTER OF:)	
)	OAH No. 07-0622-CSS
D. S. L.)	CSSD No. 001146714
_____)	

DECISION AND ORDER

I. Introduction

D. S. L. has appealed an Administrative Review Decision which was issued on September 10, 2007, in conjunction with an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (“CSSD”), also issued on September 10, 2007.¹

The formal hearing in this case was held on November 6, 2007, before Administrative Law Judge (“ALJ”) James T. Stanley. Mr. L. appeared by telephone. T. C. L., the custodian of record, appeared in person, with her counsel, David Baranow. David Peltier, Child Support Specialist II, appeared in person for CSSD. Exhibits 1 through 8 were admitted into evidence.² The hearing was recorded. On November 16, 2007, CSSD filed a post-hearing brief. The record closed on November 26, 2007.

II. Facts³

A. History

The parties are the parents of four children: R. L. L. (DOB 00/00/95), K. R. L. (DOB 00/00/99), M. R. L. (DOB 00/00/01), and D. S. L. (DOB 00/00/04). Mr. L. began living apart from the family in early 2007. A divorce action was initiated in 2007. The parties filed a joint federal tax return in 2006 stating total income for the year of \$35,329.⁴

¹ Exhibit 6.

² Exhibit 8, a notice of compliance with attached financial information for Ms. L., was filed November 16, 2007.

³ The facts are derived from the evidence and testimony, unless another source is cited.

⁴ Exhibit 2, p. 4.

Ms. L. has been the custodian of the children at all pertinent times, save between July 24, 2007 and August 17, 2007 when R., K., and M. resided with Mr. L. K. continued to reside with Mr. L. until September 7, 2007.

B. Material Facts

Ms. L. applied for public assistance in February 2007.⁵ Her application for public assistance triggered an assignment to CSSD of child support due from Mr. L. to his children. CSSD issued an Administrative Child Support and Medical Support Order on June 6, 2007; the order was served June 14, 2007. On March 2, 2007, Mr. L. made a direct payment to the custodian of \$400.

Mr. L. filed his request for an administrative review on June 28, 2007.⁶ In response thereto, CSSD issued an Amended Administrative Child Support and Medical Support Order on September 10, 2007. The recalculations performed by CSSD resulted in an ongoing support obligation of \$561 per month. Mr. L. appealed the administrative review decision issued on October 9, 2007. Mr. L. urged that CSSD take into consideration his physical custody of three of his children from July 24, 2007 through August 17, 2007, and physical custody of one of those three children which continued through September 7, 2007.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁷ 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." 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.⁸ Arrears begin accruing as of the first month in which state assistance was provided on behalf of the child (or children).⁹

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

⁵ Exhibit 1, p. 7.

⁶ Exhibit 2.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ 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).

⁹ 15 AAC 125.105(a)(1).

periods before the effective date of the ongoing child support obligation.¹⁰ When calculating child support arrearages, CSSD will give credit for payments actually made by the obligor directly to the custodian.¹¹ CSSD agrees that Mr. L. paid child support in the amount of \$400 directly to the custodian in March 2007; accordingly, he is entitled to credit in the amount of \$400.

The facts in this case do not establish that Mr. L. had custody of his four children in 2007 sufficient to create a divided custody situation.¹² The facts show that Ms. L. has (and had) primary physical custody of all four children during 2007, but one of the four children resided with Mr. L. from July 24, 2007 to September 7, 2007; therefore, Mr. L. is entitled to a visitation credit for one child for the month of August 2007 in the amount of \$105.¹³

At the conclusion of the formal hearing in this matter, the ALJ ordered each party to submit current financial information. Through her counsel, Ms. L. supplied current information. Mr. L. did not provide additional or current financial information. Absent current financial information, further recalculation of support was not possible.

After due consideration of the entire record in this matter, I find that the amount of child support to be paid by Mr. L. has been incorrectly calculated at \$561 per month because the parties did not exercise divided custody in August and September of 2007. The arrearage amount for each of these two months should be \$779, rather than \$561. Thus, the amount of arrears due for the period of February 1, 2007 through September 30, 2007 appears incorrectly determined at \$5396. Credit in favor of Mr. L. for the \$400 direct payment has been given.¹⁴

IV. Conclusion

Mr. L. has not met his burden of proving by a preponderance of the evidence that CSSD's child support calculation was incorrect. With respect to the calculation of arrearages, recalculation consistent with this decision is required.

¹⁰ 15 AAC 125.105(a).

¹¹ 15 AAC 125.105(b).

¹² Parents have a divided custody situation if one parent has primary physical custody of one or more children of the relationship and the other parent has primary custody of one or more other children of the relationship, and the parents do not share physical custody of any of their children. Civil Rule 90.3(f)(3).

¹³ Civil Rule 90.3(a)(3) provides that when the obligor has visitation with a child for a period greater than 27 days, the obligor's child support for that period can be reduced by 75%. Accordingly, Mr. L. is entitled to a visitation credit of \$105 (total monthly child support of \$561 divided by 4, multiplied by 75%).

¹⁴ Exhibit 6, p. 10.

V Child Support Order

Mr. L. is liable for ongoing child support in the amount of \$779 per month for four children effective October 1, 2007, and for arrears in the amount of \$779 per month for the period beginning February 1, 2007 through September 30, 2007. Mr. L. is entitled to a visitation credit in the amount of \$105 for August 2007, and a direct payment credit in the amount of \$400 for March 2007.

DATED this 13th day of March, 2008.

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 3rd day of April, 2008.

By: Signed
Signature
James T. Stanley
Name
Administrative Law Judge
Title

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