

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

IN THE MATTER OF)	OAH No. 08-0042-CSS
C. W. C.)	CSSD No. 001147691
)	
_____)	

DECISION AND ORDER

I. Introduction

On February 14, 2008, a formal hearing was held to consider the child support obligation of C. W. C. (Obligor) for the support of his children, C. and I. (Obligees).¹ Mr. C. participated in the hearing. The custodial parent, C. C., also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded.

This case is Mr. C.'s appeal of the Division's order establishing his monthly child support obligation for his children, C. and I. Based on the evidence in the record, Mr. C.'s arrears and ongoing child support should be set as previously calculated in the Amended Administrative Child and Medical Support Order on December 11, 2007 Mr. C. should receive a total credit of \$4,540 for the direct and in-kind payments of child support he made to Ms. C.

II. Facts

In December of 2007, Ms. C. applied for public assistance medical coverage for her children, C. and I.² Paternity is not in dispute.³ Mr. C. is named as C. and I.'s father on C. and I.'s birth certificate and his paternity was confirmed through genetic testing.⁴

The Division served Mr. C. with an Administrative Child and Medical Support Order on July 25, 2007.⁵ Mr. C. requested an administrative review of that order.⁶

¹ The hearing was held under Alaska Statute 25.27.170.

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

³ Division's Pre Hearing Brief, page 1 & Recording of Hearing.

⁴ Division's Pre Hearing Brief, page 1.

⁵ Ex. 3.

The Division issued an Amended Administrative Child and Medical Support Order on December 11, 2007.⁷ The Division set Mr. C.'s monthly ongoing child support for C. and I. at \$744. The order also established arrears beginning in December of 2006. Mr. C. requested a formal hearing.⁸

At the hearing, Mr. C. asserted that he had made direct payments of child support to Ms. C. during the period covered by the order for which he had not received credit.⁹

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations used to set the monthly support obligation for its Amended Administrative Child and Medical Support Order and the information used in these calculations are correct and accurately reflect Mr. C.'s income.¹⁰ Based on the evidence in the record, I also find that there is clear and convincing evidence that Mr. C. made direct and in-kind payments of child support to Ms. C. during the period covered by this order as follows:

- in December of 2007-- payments of \$420 that he paid by Xoom, in addition to which, Mr. C. was charged \$20.00 in transaction fees when he sent the money to Ms. C..
- in January of 2008 – direct payments of \$500 that he paid by PayPal of which Ms. C. was charged \$15.10 in transaction fees when she withdrew the money from the account;
- in February of 2007 -- direct payments of \$500 that he paid by PayPal of which Ms. C. was charged \$15.10 in transaction fees when she withdrew the money from the account;
- in March of 2007 -- direct payments of \$500 that he paid by PayPal of which Ms. C. was charged \$15.10 in transaction fees when she withdrew the money from the account;
- in April of 2007 -- direct payments of \$700 that he paid by PayPal of which Ms.

⁶ Ex. 4.

⁷ Ex. 7.

⁸ Ex. 7.

⁹ Recording of Hearing.

C. was charged \$21.20 in transaction fees when she withdrew the money from the account;

- in May of 2007 -- direct payments of \$500 that he paid by PayPal of which Ms. C. was charged \$15.10 in transaction fees when she withdrew the money from the account;
- in June of 2007-- direct payments of \$500 that he paid by PayPal of which Ms. C. was charged \$15.10 in transaction fees when she withdrew the money from the account;
- and in July of 2007 -- direct payments of \$400 that he paid by PayPal of which Ms. C. was charged \$11.90 in transaction fees when she withdrew the money from the account.¹¹

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. C., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹²

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.¹³ 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.¹⁴ All of Mr. C.'s direct payments were made before he was served with Administrative Child and Medical Support Order.¹⁵

The Division served Mr. C. with an Administrative Child and Medical Support Order on

¹⁰ Recording of Hearing & Ex. 12.

¹¹ Recording of Hearing.

¹² Alaska Regulation 15 AAC 05.030(h).

¹³ Alaska Regulation 15AAC 125.465.

¹⁴ *Ogard v. Ogard*, 808 P.2d 815, 817 (Alaska 1991) & Alaska Regulation 15AAC 125.105(b) & (c).

¹⁵ Ex. 3.

July 25, 2007.¹⁶ Mr. C. should receive credit for both the direct payments in the amounts that Ms. C. received as well as the in-kind contributions that took the form of the charges billed to parties as transaction costs.

Ms. C. took the children to live in Brazil before the period in which these payments were made. It is clear that Mr. C. worked diligently to ensure that Ms. C. timely received payments of child support in the country she was living with the children. Mr. C. made extraordinary efforts so that Ms. C. received these payments in a form that would allow her to use them for the children's support and that the payments were as liquid as possible in the country she was living in. Mr. C. could have merely mailed Ms. C. personal checks through the mail at almost no cost to himself. That method would have resulted in substantial delays before Ms. C. could use the money, as the check would have had to go through the mail. The checks would have had to clear between banks in different countries and Ms. C. may have incurred substantial fees in negotiating a personal check in another country.

Mr. C. testified that he first set up the electronic transfer payments through PayPal because Ms. C. took the children to live in Brazil before the period covered by this child support order. Unfortunately, the PayPal method did not work well for Ms. C. when she was in Brazil. Ms. C. testified that PayPal was still too cumbersome, time consuming and costly in Brazil. Ms. C. asked Mr. C. to find another method of payment.

Mr. C. then began to pay Ms. C. through the internet company Xoom to help reduce these problems. Mr. C. set up electronic payments to go directly to Ms. C.'s Brazilian bank account, though Xoom, even though this method involved the transaction fees that were born by Mr. C.

Mr. C. started using PayPal again, in January of 2007, after Ms. C. closed her Brazilian Bank account and moved back to Alaska without letting him know where he needed to send child support.

Mr. C. explained that PayPal did not charge transaction fees to him to transfer money into Ms. C.'s PayPal account. Mr. C. also explained that Ms. C. could have withdrawn money from her PayPal account without incurring transaction fees if she had applied for and received a PayPal debit card, which she could have used like a visa or other credit card. The PayPal website states that PayPal debit cards are honored wherever MasterCard are accepted.

¹⁶ Ex. 3.

Ms. C. had tried to get a debit card while she was in Brazil, but as noted above, was not able to make transfers from her PayPal account in Brazil. Ms. C. apparently did not attempt to obtain a PayPal debit card when she returned to Alaska. Instead, she made withdrawals from her PayPal account by requesting checks. PayPal charged a transaction fee for each withdrawal that was made this way.

At the hearing, the Division argued that Mr. C. should not receive a credit for either the transaction fees he paid to transfer money to Ms. C. in Brazil in December of 2006, or the transaction fees that Ms. C. was charged to have PayPal issue checks to her to withdraw the money that Mr. C. had deposited in her account for child support.

The Division correctly pointed out that it is an obligor's responsibility to ensure that a custodian receives child support. Any efforts or costs that are required to make those payments such as the costs of cashiers checks money orders or postage are usually born by the obligor. In this case however, there are unusual circumstances. The payments at issue were made before there was any child support order directing Mr. C. how to make payments. If there had been an order the Division would have collected these amounts without charging either Mr. C. or Ms. C. In choosing to use Xoom and PayPal, Mr. C. was attempting to transfer his payments of child support in the manner that would give her access to the support as quickly as possible, and cost her the least in transaction fees. These efforts were a benefit to Ms. C. that had value.

The Xoom transfer fees incurred by Mr. C. were incurred by him in order to provide these benefits to Ms. C. and the children and are therefore an in-kind contribution of child support. The value of an in-kind contribution of child support is generally measured by the out-of-pocket cost of the contribution to the obligor. The PayPal charges were incurred by Ms. C. because of her election to withdraw those funds by requesting a payment by check, rather than using a debit card. Under the circumstances of this case, Mr. C. should not be penalized because Ms. C. chose to use a method of drawing on the funds that he transferred to her that resulted in transaction fees.

At the hearing, Mr. C. also asked that his arrears for the month of December of 2006 be pro-rated because Ms. C. did not return to the U.S. until December 12, 2006. Because Ms. C. applied for Medicaid for the children in December of 2006, the Division was required by regulation to establish pre-order child support arrears going back to the first day of that month. There is no exception in that regulation for cases where the custodial parent was not in the state

or country for the first part of the month that she requested services.¹⁷

IV. Conclusion

The Division correctly declined to pro-rate Mr. C.'s arrears for the month of December 2006. The Division's amended order should be affirmed, but Mr. C. should receive a total of \$4,540 in credits for the direct and in-kind payments of child support he made to Ms. C. prior to service of the original order.

V. CHILD SUPPORT ORDER

1. The Division's Amended Administrative Child and Medical Support Order issued on December 11, 2007 is affirmed.
2. Mr. C. should receive a total of \$4,540 in credits for the direct and in-kind payments of child support he made to Ms. C. prior to service of the original order.

DATED this 30th day of September, 2008.

By: Signed_____

Mark T. Handley

Administrative Law Judge

¹⁷ 15 AAC 125.105(a)(1).

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 21st day of October, 2008.

By: Signed
Mark T. Handley
Administrative Law Judge

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