

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

IN THE MATTER OF)
)
D. T.) Case No. OAH-08-0281-CSS
) CSSD Case No. 001136068
_____)

ORDER GRANTING MOTION TO DISMISS

I. Introduction

The custodian, A. G., appealed a Notice of Withholding regarding withholding of wages of the obligor, D. T.¹ The child is M. G. (DOB 00/00/04). The Child Support Services Division (CSSD) determined that Ms. G.’ intent was to appeal an Administrative Child Support and Medical Support Order issued on June 12, 2007. CSSD referred the matter to the Office of Administrative Hearings, and then moved to dismiss the appeal for want of timeliness. A hearing was held on the motion on June 26, 2008. Both Mr. T. and Ms. G. appeared by telephone. Andrew Rawls represented CSSD by telephone. CSSD’s motion is granted.

II. Facts

Ms. G. has two children: M., who is the beneficiary of this order, and N. G., an older child of a different relationship. Early in 2005, Ms. G. applied for public assistance. On February 23, 2005, she completed a Child Support Information form for M., naming Mr. T. as the father and providing a description and phone number for Mr. T., and stating that she agreed to cooperate with child support enforcement.

On A. 28, 2005, Ms. G. completed another Child Support Information form. On this form, Ms. G. stated that she had good cause not to cooperate with CSSD. In the top margin of this form, Ms. G. wrote, “For N. G.”

On May 11, 2005, Ms. G. completed a Child Support Cooperation Agreement form. On this form, Ms. G. claimed good cause for not cooperating with child support enforcement because physical harm could occur to “myself and my children (M. and N.)” This form did not contain any information differentiating between the two fathers, or specify which case it applied to. On May 13, 2005, the Division of Public Assistance found good cause for refusal to cooperate with child support enforcement, and it did not refer information for either father to CSSD for establishment of a support order.

¹ Exhibit 13, page 1.

On February 16, 2007, Ms. G. filled out a second Child Support Information form and submitted it to the Division of Public Assistance.² On this form, Ms. G. did not specify whether she was willing to cooperate with child support enforcement, but she did identify Mr. T.

On April 3, 2007, CSSD received an application for services from Mr. T., requesting that CSSD establish a support order for M. CSSD issued a Notice of Paternity and Financial Responsibility on A. 9, 2007. On May 22, 2007, CSSD issued an Order Establishing Paternity naming Mr. T. as M.'s father.

CSSD issued an Administrative Child Support and Medical Support Order on June 12, 2007. This order set Mr. T.'s support obligation at \$737 per month for one child. The order also established arrears of \$3,685 for the period from February 1, 2007, through June 30, 2007. CSSD sent this order, along with a form to request an administrative review, to Ms. G. by first class mail.

On November 5, 2007, Ms. G. called CSSD and requested another appeal form. On November 28, 2007, CSSD faxed Ms. G. a copy of the June 12, 2007, order and an appeal form. Ms. G. did not return the appeal form. On December 10, 2007, she completed a third Child Support Assistance form through Division of Public Assistance, again naming Mr. T. as the father. On this form Ms. G. indicated that she did agree to cooperate with CSSD.

On November 11, 2007, Ms. G. signed a request for administrative review of a Notice of Withholding.³ It is not clear from the record when and where Ms. G. filed this form, but CSSD states that it received the form from the Division of Public Assistance. One stamp on the copy of this form in the record shows a faint date of 2007. CSSD received the form on January 7, 2008, and the formal hearing section received it on January 9, 2008. CSSD referred the matter to the Office of Administrative Hearings on June 9, 2008, and OAH received it on June 11, 2008.

Ms. G. testified that while she may have received the administrative order of June 12, 2007, she did not read it because "Mr. T. and I had a domestic violence issue, and I was drug on the side of a car, which is also in the file, and drug down on the street on the side of a car, my house was froze up, and I was displaced from my home in March. And when I got back to my house, I was busy trying to fix pipes and plumbing and toilets, and my kids threw things in the [inaudible], and so I could never find it, and did not realize exactly what it said."

² Exhibit 2, page 1.

³ Exhibit 13.

III. Discussion

Ms. G. requests that the administrative support order be changed to require Mr. T. to pay arrears for the period back to when she applied for public assistance in February, 2005.

According to 15 AAC 125.118(a),

A person served with a notice and finding of financial responsibility or with a copy of a notice and finding of financial responsibility setting a support obligation may request an administrative review of the notice and finding. The person making the request shall make it in writing, and shall send the request to the agency by certified mail, return receipt requested. The request must be postmarked or received by the agency within 30 days after service of the notice and finding of financial responsibility. The request must state the specific reasons for the request for administrative review and be accompanied by the documentation upon which the person requesting the administrative review intends to rely. When a request for administrative review does not fully comply with the requirements of this subsection, the agency will, in its discretion, accept a request for administrative review that substantially complies with the requirements of this subsection.

After a person has requested an administrative review, CSSD is required to evaluate the requesting person's claim using specified procedures, and then to issue a written decision containing specific findings.⁴ This decision may be appealed to a formal hearing if a party files a request for appeal within 30 days.⁵

Ms. G. raises a number of facts that she argues merit waiver of the 30-day deadline to appeal the administrative order. It does appear that the Division of Public Assistance erred in not referring the case to CSSD in 2005 to establish a support order against Mr. T. or notifying CSSD that Ms. G. had received public assistance for M. in 2005, and the state will therefore be unable to recoup assistance paid to Ms. G. from Mr. T. unless it pursues the matter in court.⁶ Ms. G. asserts that she got the runaround from her DPA caseworkers for two years when she asked about child support, but the blame cannot all be placed on the Division of Public Assistance; Ms. G. could have requested services from CSSD at any time, as Mr. T. ultimately did in 2007.

⁴ 15 AAC 125.118(e).

⁵ 15 AAC 05.010(b)(6).

⁶ It is unclear what prompted the administrative order in this case. CSSD states in its brief that it established arrears as of the time that Mr. T. applied for services. Ms. G. filled her second Child Support Assistance form on February 16, 2007, and Mr. T. applied for services on April 3, 2007. CSSD issued a Notice of Paternity and Financial Responsibility on April 9, 2007. The administrative order set arrears effective February 1, 2007. Depending on whether the administrative action had been initiated by the state or by Mr. T., it could be that arrears should have gone back to 2005 or that there should have been no arrears at all, as there is no provision in CSSD's regulations for any arrears when services are requested by the noncustodial parent. By not appealing within 30 days, Mr. T. waived this issue just as Ms. G. waived the issue of arrears back to 2005.

The reasons Ms. G. cited for not responding to the administrative order, including an allegation of serious domestic violence, plumbing problems after her house froze earlier in the year, and her kids throwing away her mail, are sympathetic, but the law does not appear to provide for waiver of the 30-day deadline to request administrative review. Even if there were a waiver provision, it is not certain waiver would be merited.

There is a suggestion in the record that Ms. G. finds it somewhat difficult to navigate the procedural aspects of setting up a support order, and she appears to have been under the impression that child support matters are handled by the Division of Public Assistance, not the Child Support Services Division. Still, the fact remains that Ms. G. could have made a call or sent a letter to CSSD at any time since M. was born to request services, and an order would have been promptly established. At least some of the difficult events that Ms. G. cited as reasons she did not appeal the administrative order seem to have occurred some time before the order was issued. Repairing plumbing may be time consuming and unpleasant, but it does not fully explain not reading one's mail and not making a call to CSSD to inquire as to the status of one's case. When Ms. G. did finally call CSSD and request a copy of the order and an appeal form, CSSD sent Ms. G. the documents but she did not complete and return the appeal form because she felt she had already done enough by filling out an appeal form for Mr. T.'s withholding notice and sending it to the Division of Public Assistance. Ms. G. signed her appeal of the withholding notice five months after the administrative order was established.

The issue in this case is not whether Ms. G. is entitled to support arrears back to the date of M.'s birth, but whether Ms. G. can take advantage of CSSD's free collection services for those arrears. Finality of CSSD's decision does not preclude Ms. G. from enforcing her rights in court. There has been no dispute about the amount of ongoing support established in CSSD's administrative order.

IV. Conclusion

The time for requesting an administrative review and a formal hearing on the Administrative Child Support and Medical Support Order issued by CSSD on June 12, 2007, had run before Ms. G. took a step that could be considered a request for administrative review or formal hearing. CSSD's Motion for Dismissal should be granted. If Ms. G. wishes to pursue a claim for arrears against Mr. T. she may do so in court.

V. Order

IT IS HEREBY ORDERED that CSSD's Motion for Dismissal be GRANTED, and that no further proceedings be scheduled in this matter.

DATED this 8th day of July, 2008.

By: Signed
DALE WHITNEY
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 30th day of July, 2008.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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