

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

IN THE MATTER OF: )  
 )  
Z. H. W. ) OAH Case No: 08-0534-CSS  
 ) CSSD Case No: 001150904  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

Z. H.W. has appealed an Amended Administrative Child Support and Medical Support Order that was issued on September 8, 2008 by the Child Support Services Division (“CSSD”). In his appeal filed on September 17, 2008, Mr. W. alleges that he did not receive a permanent fund dividend (“PFD”) in 2007, and therefore, CSSD should not include a 2007 PFD when calculating his child support obligation for his daughter, A. L. C. (DOB 00/00/07). The custodian of record for A. is her mother, C. L. C.

The formal hearing in this case was held on November 17, 2008, before Administrative Law Judge (“ALJ”) James T. Stanley. Mr. W. appeared in person; Ms. C. participated by telephone. David Peltier, Child Support Specialist II, appeared in person for CSSD. Exhibits 1 through 15 were admitted into evidence. The hearing was recorded. The record closed on November 26, 2008.

Mr. W. met his burden of proving that CSSD’s September 8, 2008, Amended Administrative Child Support and Medical Support Order incorrectly calculated his child support because he did not receive a 2008 PFD. His ongoing child support is set at \$181 per month.

**II. Facts<sup>1</sup>**

Ms. C. began receiving public assistance for A. in January 2007. The paternity of A. was established through genetic testing.<sup>2</sup> On March 17, 2008, CSSD issued an Order Establishing Paternity to Mr. W.<sup>3</sup> CSSD issued an Administrative Child Support and Medical Support Order

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

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

on June 27, 2008.<sup>4</sup> Mr. W. requested an administrative review of the child support order on July 17, 2008.<sup>5</sup>

Following the administrative review, CSSD issued an Amended Administrative Child and Medical Support Order on September 8, 2008, setting 2008 and ongoing child support at \$147 per month, with arrears of \$2,019 for the period from January 2007 through September 2008. On September 17, 2008, Mr. W. filed an appeal, asserting that he did not qualify for the PFD.

Mr. W. is an apprentice plumber. He is currently attending apprentice school for six weeks each year in addition to the work he is able to obtain through the union hall. He had cancer in 2007, so his income for that year consisted primarily of Social Security Benefits totaling under \$4,000.<sup>6</sup> In 2008, Mr. W. returned to work on July 31<sup>st</sup>, but his employer provided a letter stating that, as of November 17, 2008, Mr. W. was no longer employed “due to lack of work.”<sup>7</sup> Mr. W. was planning to be out of state for a few weeks in order to get married, so he expected he would get back on the apprentice plumber rehire list sometime in January 2009.

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>8</sup> 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.<sup>9</sup> Arrears begin accruing as of the first month in which state assistance was provided on behalf of the child (or children).<sup>10</sup>

At the hearing, CSSD indicated Mr. W. had provided proof from the PFD Division that his application for the 2008 PFD was denied, so that amount should not be included in his

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<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 6.

<sup>6</sup> Exhibit 10, p. 1.

<sup>7</sup> Exhibit 15.

<sup>8</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>9</sup> 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).

<sup>10</sup> 15 AAC 125.105(a)(1).

income.<sup>11</sup> Subsequent to the hearing, Mr. W. provided a copy of the last pay stub from his former employer.<sup>12</sup> CSSD used that information to estimate his 2008 income at \$13,023.87, not including the 2008 PFD.<sup>13</sup> Based on that income figure, CSSD recalculated Mr. W.'s 2008 and ongoing child support for A. at \$181 per month.<sup>14</sup> There is no dispute that CSSD correctly calculated Mr. W.'s 2007 child support at \$58 per month, based on his Social Security benefits.<sup>15</sup>

Mr. W.'s belief that CSSD overstated his income for 2007 is supported by documentary evidence that he did not receive a PFD in 2008. Using actual income data for 2008, CSSD correctly calculated his child support obligation to be \$181 per month for A.

#### **IV. Conclusion**

Mr. W. has met his burden of proving by a preponderance of the evidence that CSSD's child support calculation was incorrect as a result of including the 2008 PFD. Mr. W. has not argued or established that the recalculated child support amount of \$181 per month is incorrect. This amount is correct and should be adopted.

#### **V. Child Support Order**

Mr. W. is liable for child support in the amount of \$58 per month for 2007; \$181 per month for 2008; and \$181 per month for January and February 2009, and ongoing.

All other provisions of the September 8, 2008, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 27<sup>th</sup> day of February, 2009.

By: Signed \_\_\_\_\_  
James T. Stanley  
Administrative Law Judge

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<sup>11</sup> See Exhibit 15, a letter from the PFD Division explaining that Mr. W. did not receive a 2008 PFD because he was incarcerated in 2007 for a felony and was therefore ineligible.

<sup>12</sup> Exhibit 14.

<sup>13</sup> Exhibit 13.

<sup>14</sup> *Id.*

<sup>15</sup> Exhibit 10, p. 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 16<sup>th</sup> day of March, 2009.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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