

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

IN THE MATTER OF:)	
)	OAH No. 08-0553-CSS
A. R. K.)	CSSD No. 001152567
_____)	

DECISION AND ORDER

I. Introduction

The obligor, A. R. K., appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 24, 2008. The Obligee child is A., DOB 00/00/07.

The formal hearing was held on October 28, 2008. Mr. K. appeared by telephone; the custodian, E. A. W., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 28, 2008.

Based on the record as a whole and after careful consideration, CSSD's September 24, 2008, Amended Administrative Child Support and Medical Support Order is affirmed. Mr. K. did not provide sufficient proof he made direct payments to Ms. W. during the period of time at issue, and he is not entitled to a waiver of the arrears.

II. Facts

A. History

Ms. W. applied for child support services in March 2008.¹ On August 7, 2008, CSSD served an Administrative Child and Medical Support Order on Mr. K.² He requested an administrative review and provided income information.³ Following the administrative review, CSSD issued an Amended Administrative Child Support and Medical Support Order on September 24, 2008, that set Mr. K.'s ongoing support at \$448 per month, with arrears of \$2,681 for the period from March 2008 through September 2008.⁴ Mr. K. filed an appeal and requested

¹ Pre-hearing brief at pg. 1; *see also* Exh. 8 at pg. 2.

² Exhs. 1-3.

³ Exhs. 4-6.

⁴ Exh. 7.

a formal hearing on October 7, 2008, asserting primarily that he had made payment to Ms. W. that covered the arrears and that he would be getting a court order for shared custody of A.⁵

B. Material Facts

Mr. K. and Ms. W. are the parents of A., DOB 00/00/07. Ms. W. is the child's custodial parent, although Mr. K. reported that the parties are currently in litigation regarding custody.⁶

Mr. K. works on the North Slope on a 2 week-on and 2 week-off schedule. He lives out of state with his companion S. and their two children, who are both older than A.⁷

Mr. K. agreed with CSSD's estimation that his 2008 income would total \$50,609.98.⁸ CSSD used this figure to calculate his child support obligation at \$448 per month for one child.⁹ Mr. K. is entitled to a health insurance credit of \$64.50 per month.¹⁰ CSSD subtracted this figure from the child support calculated above and reached the final child support amount of \$383 per month.¹¹ At the hearing, Mr. K. accepted this figure as the current and ongoing child support amount.

III. Discussion

Mr. K.'s primary argument is that he should not be charged for arrears in this case because Ms. W. told him on more than one occasion that he was not A.'s father. He also asserts he supported A. by providing funds to Ms. W. for her care. He said he made deposits to a joint checking account he held with Ms. W. and also sent her money orders for child care for A.

Mr. K. provided a printout from a checking account that he held jointly with Ms. W.; the dates on the printout were from December 20, 2007, through January 3, 2008.¹² Mr. K. also provided copies of two money order receipts dated February 19, 2008, both in the amount of \$60 and with the words "child care" written on them by hand.¹³ Finally, Mr. K. asserted that he had

⁵ Exh. 9.

⁶ Unless otherwise cited, the facts are taken from Mr. K.'s testimony.

⁷ Exh. 6 at pgs. 4-9.

⁸ Mr. K. is not entitled to the PFD because he lives out of state. Also, he is entitled to a deduction from his income in the amount of \$828 per month for supporting his prior children in the home. *See* Exh. 8 at pg. 1. There is not dispute about these two items.

⁹ Exh. 8 at pg. 1.

¹⁰ Exh. 13 at pg. 14.

¹¹ Exh. 8 at pg. 1.

¹² Exh. 10 at pgs. 4-6.

¹³ Exh. 10 at pgs. 1-2.

filed a custody action and submitted copies of court documents he had completed and apparently filed in April 2008.¹⁴

A parent is obligated both by statute and at common law to support his or her children.¹⁵ This obligation begins when the child is born.¹⁶ By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), up to six years prior to service on the obligor of notice of his or her support obligation.¹⁷ The person who filed the appeal, in this case, Mr. K., has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹⁸

In this case, Ms. W. requested CSSD's services to obtain child support in the month of March 2008, so that is the first month Mr. K. is obligated to pay support in this child support case. Mr. K.'s claim that he should not have to pay arrears because Ms. W. told him A. was not his child is without merit. Whether the biological father is informed of his paternity does not affect his obligation to support the child.

Mr. K.'s second issue concerns credit for direct child support payments he asserts he provided for A. CSSD may give the obligor credit for direct payments made "before the time the obligor is ordered to make payments through the agency," so long as the direct payment was not made before the first date support is due in the administrative child support action.¹⁹ An obligor who requests such credit must prove by a preponderance of the evidence he or she actually made the payments.²⁰

In this case, CSSD determined Mr. K. is not entitled to a credit for making direct payments on A.'s behalf because the deposits he testified he made to the parties' joint checking account, and the money orders he said he sent Ms. W. were all made in January or February 2008, prior to March 1, 2008, the date his support obligation became effective.²¹ Mr. K. and Ms. W. indeed may have had an agreement for him to provide funds for A.'s support by depositing

¹⁴ Exh. 13.

¹⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁶ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁷ 15 AAC 125.105(a)(1)-(2).

¹⁸ 15 AAC 05.030(h).

¹⁹ AS 25.27.020(b).

²⁰ *Id.*

money into a joint checking account, but CSSD cannot give Mr. K. a credit for payments made before the first date support is due, based on the date of Ms. W.'s application for services.

Finally, as to Mr. K.'s assertion that he had filed an action for joint custody of A., in the event he obtains a court order regarding custody of the child, he should submit it to CSSD as soon as possible thereafter. CSSD cannot make any changes in Mr. K.'s child support obligation based on a change of custody without a court order or Ms. W.'s written statement that custody has changed.

IV. Conclusion

Mr. K. did not meet his burden of proving that the Amended Administrative Child Support and Medical Support Order was incorrect. He did not object to CSSD's calculation of his monthly child support amount, so it should be adopted. Mr. K. is not entitled to a waiver of the arrears, nor did he prove by a preponderance of the evidence that he is entitled to a direct credit for payments made to Ms. W. on A.'s behalf. Therefore, CSSD's September 24, 2008, Amended Administrative Child Support and Medical Support Order should be affirmed.

V. Child Support Order

- CSSD's September 24, 2008, Amended Administrative Child Support and Medical Support Order is affirmed.

DATED this 19th day of February, 2009.

By: Signed
Kay L. Howard
Administrative Law Judge

²¹ See Exh. 2 at pg. 2, regarding Ms. W.'s application for child support services.

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 9th day of March, 2009.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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