

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

In the matter of:)	
)	OAH No. 08-0579-CSS
A. S., JR.)	CSSD No. 001150302
_____)	

DECISION AND ORDER

I. Introduction

A. S., Jr. appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 2, 2008. The obligee child is J. G., born 00/00/07. The custodial parent is M. G.

The formal hearing was held on November 18, 2008. Mr. S. did not appear and Ms. G. did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record initially closed on November 28, 2008, but was reopened subsequently in order to receive additional exhibits requested from CSSD. Final record closure occurred on December 31, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record and after careful consideration, Mr. S.' ongoing child support as set forth in CSSD's Amended Administrative Child Support and Medical Support Order is set at \$492 per month, but this figure should be effective from August 2008, not November 2008. Other adjustments also have been made to Mr. S.' arrears to reflect the correct number of children Mr. S. supported in the home, the amount of support he was paying for other children and his correct wages and deductions.

II. Facts

A. Procedural History

Ms. G. applied for CSSD's services in September 2007.¹ On August 16, 2008, CSSD served an Administrative Child Support and Medical Support Order on Mr. S.² He requested

¹ Pre-Hearing Brief at pg. 1.

² Exhs. 3 & 5.

and received an administrative review.³ On October 2, 2008, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. S.' ongoing child support at \$562 per month, effective November 1, 2008, and arrears of \$9,682 for the period from September 2007 through October 2008.⁴ Mr. S. appealed on October 24, 2008, claiming he was given credit only for two children in his household, not three; the credit for prior children in the home should be higher than the one CSSD used; and he was given no credit for having children covered by his medical insurance.⁵

The Alaska Office of Administrative Hearings (OAH) issued notice to both parents of a formal hearing to be held November 18, 2008, using Certified Mail sent 19 days in advance. A return receipt was received for Ms. G., but not from Mr. S. The Certified Mail receipt shows that the address used for Mr. S. was the same as the one he provided in his request for appeal. The two parents did not contact OAH in advance of the hearing, did not appear at the hearing, and could not be reached by telephone. The administrative law judge convened the hearing as scheduled and interviewed CSSD's representative about the issues in the appeal.

B. Material Facts

Mr. S. is the legal father of J., DOB 00/00/07.⁶ He also has four prior children for whom he provides support: W., DOB 00/00/99; L., DOB 00/00/00; J., DOB 00/00/05; and A., DOB 00/00/06. W. and L. live in Mr. S.' home with him and his wife, J.⁷ At the time this child support matter was initiated in September 2007, Mr. S. paid support on behalf of J. in the amount of \$606 per month and on behalf of A. in the amount of \$871 per month.⁸ A. was subsequently removed from her mother's custody by the Office of Children's Services (OCS) and on November 1, 2007, she was placed in Mr. S.' home, where she has remained ever since.⁹ Thus, on that date Mr. S. began supporting three prior children in the home as he continued to pay support for J.

³ Exhs. 6-8.

⁴ Exh. 9.

⁵ Exh. 11. Mr. S.' caseworker will apply the correct medical insurance credit to his child support amount after he provides CSSD with all of the information necessary to calculate the credit. It appears, based on the handwritten notes on Exhibit 8 at pg. 9 that Mr. S. still needs to provide the effective date of the insurance and his cost for it. There is no deduction for insurance reflected on the paystubs Mr. S. submitted. *See* Exh. 8.

⁶ Exh. 2 (Order Establishing Paternity).

⁷ Exh. 8 at pg. 6.

⁸ Pre-hearing brief at pg. 1.

⁹ Exh. 14.

In addition to the change in the number of prior children living in his home, Mr. S. has had changes in his income and the deductions from his wages. In January 2008, Mr. S. began earning less income than in 2007. His estimated annual income for 2008 is \$85,540, which CSSD determined from his year-to-date income at the end of August, plus four months of his salary of \$7,180 per month.¹⁰ In August 2008, Mr. S. began paying 10% of his monthly salary – \$718 – into a voluntary retirement account and also began paying union dues of \$71.80 per month.¹¹

III. Discussion

This appeal raises primarily the issue of Mr. S.’ child support obligation for the period from September 2007 forward, but the obligor’s failure to appear for the hearing should also be discussed.

A. Failure to Appear

Under 15 AAC 05.030(j), “[i]f a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear.” Mr. S. did not attempt to make the required showing within ten days after the scheduled hearing, so the administrative law judge will proceed with the decision.

B. Child Support Calculations

At the hearing, the CSSD representative worked with the administrative law judge to identify the exhibits and calculations pertaining to the relevant time periods. Because of a misunderstanding about the number of periods with distinct circumstances, and because one or two exhibits were missing, this effort was not completely successful at the time. Since the hearing, CSSD has responded to a request for additional calculations with new exhibits 19, 20 and 21. It is CSSD’s view that child support going forward should be \$562 per month as set in the order under appeal, but that arrears should be adjusted downward in periods III and IV as shown in the following table:

¹⁰ See Exh. 9 at pg. 4 and Exh. 10 at pg. 3.

¹¹ Exh. 8 at pg. 1.

Period No.	Dates Covered	Exhibits	Circumstances	Support Amount
I	Sept, Oct 2007	12 and 10 p. 1	2 prior children in home (W. & L.); credit for \$1477 total C/S paid for J. & A.; no retirement & union dues	\$569 per month
II	Nov, Dec 2007	13 and 10 p. 2	3 prior children in home (W., L. & A.); credit for \$606 C/S paid for J.; no retirement & union dues	\$712 per month
III	Jan – July 2008	15 and 19	3 prior children in home (W., L. & A.); credit for \$606 C/S for J.; no retirement & union dues; lower estimated earnings in 2008	\$653 per month
IV	Aug – Oct 2008	16 and 20	3 prior children in home (W., L. & A.); credit for \$606 C/S for J., \$299.17 for retirement & \$29.92 for union dues	\$601 per month
V	Nov & ongoing	17 and 10 p. 3	3 prior children in home (W., L. & A.); credit for \$606 C/S for J., \$534.63 for retirement & \$71.80 for union dues	\$562 per month

In addition, CSSD prepared a new Summary of Support Obligation showing the effect of these adjustments on the arrears owed by Mr. S.¹² The individual calculations are discussed below.

1. Time period I – September and October 2007

CSSD correctly calculated Mr. S.’ child support for this time period at \$569 per month. CSSD determined that Mr. S.’ deduction for supporting two prior children in the home should be \$1,599, based on his total 2007 income, including the PFD.¹³ The other deduction totals \$1477 for the support Mr. S. paid for J. and A. during this period. Inserting these deductions into CSSD’s child support calculator, located on its website at <http://www.childsupport.alaska.gov/>, results in a support determination of \$569 per month.¹⁴

2. Time period II – November and December 2007

When A. was placed with Mr. S. on November 1, 2007, he then had three prior children to support in his home. CSSD determined Mr. S.’ child support obligation during this period by

¹² Exh. 21.

¹³ Exh. 12. Several of CSSD’s exhibits have handwriting that identifies the name of each prior child for whom Mr. S. receives a deduction. CSSD said during the hearing that the handwriting belongs to the caseworker.

¹⁴ Exh. 10 at pg. 1. All of the calculations discussed herein contain standard deductions for taxes and Social Security, which are not at issue.

calculating Mr. S.' deduction for supporting three prior children in the home at \$1,745, based on his total 2007 income, including the PFD.¹⁵ With A. in the home, Mr. S.' obligation to pay support for her ended, so he is now entitled only to the extra deduction of \$606 per month for the support he paid for J. during this period. CSSD calculated child support for this time period of \$712 per month.¹⁶

CSSD's calculation is incorrect. An examination of the worksheets reveals that CSSD inserted the \$606 per month deduction for paying support for J. in both the prior child deduction calculation and the child support calculation for J.¹⁷ That deduction for J. should not be in the calculation for the three prior children in the home. Its placement there reduces the amount of the three prior children deduction and gives the impression that J. is the oldest of Mr. S.' prior children, but he is not. The only correct placement for the \$606 deduction for J. is the final child support calculation for J. J.'s deduction is separate from the deduction for prior children living in the home and it should only be used in J.'s child support calculation.

CSSD's error is easily corrected by removing the \$606 deduction for J. from the three prior children calculation. This results in a corrected deduction for supporting three children in the home in the amount of \$1,954 per month.¹⁸ Inserting the correct numbers into the online child support calculator results in a child support amount of \$672 per month for J. during this period.¹⁹

3. Time period III – January through July 2008

CSSD used Mr. S.' total estimated income of \$85,540 for 2008 to calculate his support obligation for J. for the year.²⁰ Other than this change, CSSD's methodology for 2008 was similar to the calculation for November and December 2007, and in that respect, it is also an incorrect calculation of the deduction for supporting three prior children in the home.²¹ Correcting that mistake is done in the same way as for the earlier time period, by removing Mr. S.' \$606 per month deduction for paying support for J. from the three prior children calculation.

¹⁵ Exh. 13.

¹⁶ Exh. 10 at pg. 2.

¹⁷ See Exh. 13 and Exh. 10 at pg. 2.

¹⁸ Attachment A.

¹⁹ Attachment B.

²⁰ In addition to the 2008 PFD, Mr. S.' total income includes the \$1,200 energy rebate Alaska residents received in 2008, as shown in Exhibit 15 and the other calculations for 2008.

²¹ See Exh. 15.

This yields a deduction for the three prior children in the amount of \$1,809 per month for 2008.²² Inserting the correct numbers into the online calculator results in a child support amount of \$613 per month for J. during the first half of 2008.²³

4. Time period IV – August through October 2008

In August 2008, Mr. S. began paying 1% of his salary – \$71.80 per month – toward union dues and 10% of his monthly salary – \$718 per month – into a voluntary retirement account.²⁴ Mr. S. is not entitled to deduct all of the retirement amount, however, because Civil Rule 90.3(a)(1)(A), limits voluntary retirement deductions to 7.5% of an employee’s “gross income” if he or she does not participate in a mandatory retirement program. Thus, the maximum amount of Mr. S.’ retirement contribution is \$534.63 per month as of August 2008.²⁵ CSSD did not use this figure as Mr. S.’ retirement deduction until November 2008. Instead, for the three months prior to November, CSSD deducted \$299.17 per month in retirement contributions from Mr. S.’ income in J.’s calculation.²⁶ The origin of the \$299.17 per month retirement deduction cannot be ascertained from the current record. Therefore, since Mr. S.’ August 2008 paystub indicates he made a retirement contribution for that month in the amount of \$718, that figure should be used as the basis for his retirement deduction, up to the 7.5% maximum as allowed by Civil Rule 90.3.

Thus, the correct figures to use in Mr. S.’ child support calculation beginning August 2008 are the \$1,809 deduction for three children in the home, the \$606 per month deduction for paying support for J., the retirement deduction of \$534.63, and the union dues of \$71.80. Inserting these figures into a support calculation for J. results in a child support amount of \$492 per month for this period.²⁷ Significantly, this calculation also applies to the ongoing time period, as discussed in the next section.

5. Time period V – November 2008 and ongoing

CSSD made a final support calculation in this case beginning in November 2008. The primary reason for the calculation is because November 2008 is the first month CSSD attributed the entire retirement deduction of \$534.63 per month to Mr. S. Since this decision and order

²² Attachment C.

²³ Attachment D.

²⁴ Exh. 8 at pg. 1.

²⁵ $\$85,540 \text{ annual income} \times 7.5\% = \$6,415.50 \text{ annually} \div 12 \text{ months} = \$534.63 \text{ per month.}$

²⁶ See Exh. 20.

²⁷ Attachment E.

applies that deduction effective August 2008, there is no necessity for a fifth time period of calculations. Therefore, Mr. S.' ongoing child support amount for J. should be \$492 per month, effective August 2008.

As a result of the changes discussed above, a corrected table containing four time periods has been inserted as a visual aid for this decision:

Period No.	Dates Covered	Exhibits	Circumstances	Support Amount
I	Sept, Oct 2007	Exh. 12; Exh. 10, pg. 1	Credit of \$1,599 for 2 prior children in home (W. & L.); credit for \$1477 total C/S paid for J. & A.; no retirement & union dues	\$569 per month
II	Nov, Dec 2007	Attachments A & B	Credit of \$1,954 for 3 prior children in home (W., L. & A.); credit for \$606 C/S paid for J.; no retirement & union dues	\$672 per month
III	Jan – July 2008	Attachments C & D	Credit of \$1,809 for 3 prior children in home (W., L. & A.); credit for \$606 C/S for J.; no retirement & union dues; lower estimated earnings in 2008	\$613 per month
IV	Aug 2008 & ongoing	Attachments C & E	Credit of \$1,809 for 3 prior children in home (W., L. & A.); credit for \$606 C/S for J., \$534.63 for retirement & \$71.80 for union dues; lower estimated earnings in 2008	\$492 per month

IV. Conclusion

Mr. S. met his burden of proving the child support amounts set forth in CSSD's October 2, 2008, Amended Administrative Child Support and Medical Support Order were not correctly calculated. Adjustments were made in the calculations so that Mr. S.' arrears and ongoing child support amount have now been correctly determined. These figures should be adopted.

V. Child Support Order

- Mr. S. is obligated to pay support for J., DOB 00/00/07, in the amount of \$569 per month for September and October 2007; \$672 per month for November and December 2007; \$613 per month for January through July 2008; and \$492 per month for August 2008 and ongoing;

- All other provisions of the October 2, 2008, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 3rd day of February, 2009.

By: Signed
Kay L. Howard
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 23rd day of February, 2009.

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