

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

IN THE MATTER OF:	)	
	)	OAH Case No: 08-0583-CSS
W. H. M.	)	CSSD Case No: 001151087
_____	)	

**DECISION AND ORDER**

**I. Introduction**

W. H. M. has appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued on September 23, 2008.<sup>1</sup> In his appeal filed on October 27, 2008, Mr. M. alleges that he did not earn the income in 2007 that was used by CSSD to calculate his child support obligation for his daughter, R. C. L. (DOB 00/00/07). The custodian of record for R. is her mother, A. K. L.

The formal hearing in this case was held on November 18, 2008, before Administrative Law Judge (“ALJ”) James T. Stanley. Mr. M. appeared in person; Ms. L. did not appear or participate in the hearing.<sup>2</sup> David Peltier, Child Support Specialist, appeared in person for CSSD. Exhibits 1 through 12 were admitted into evidence. The hearing was recorded. The record closed on November 28, 2008.

Because Mr. M. has not established that the information used by CSSD to calculate his child support was incorrect, the Amended Administrative Child Support Order issued on September 23, 2008 stands as issued, with one minor date change.<sup>3</sup>

**II. Facts<sup>4</sup>**

Ms. L. applied for child support services in her state of residence on November 26, 2007. That state forwarded a Uniform Interstate Family Support Act (“UIFSA”) enforcement request to

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<sup>1</sup> Exhibit 11.

<sup>2</sup> Notice of the hearing was mailed to Ms. L. on October 30, 2008. At the onset of the hearing, a telephone call was placed to Ms. L. at her telephone number of record. The telephone call was not answered. Ms. L. did not subsequently contact the OAH. Notice of the hearing was also mailed to her out of state agency representative; this office received the Notice of Hearing on November 3, 2008, as evidenced by the return receipt.

<sup>3</sup> The effective date of the ongoing support amount in the Amended Administrative Child Support and Medical Support Order was changed from October 1, 2008, to July 1, 2008, pursuant to CSSD’s request, as discussed herein.

<sup>4</sup> The facts are derived from the evidence and testimony, unless another source is cited.

CSSD in Alaska. CSSD received the UIFSA petition on December 3, 2007,<sup>5</sup> and served Mr. M. with a Notice of Paternity and Financial Responsibility on December 23, 2007.<sup>6</sup> In response, Mr. M. asserted that he was unsure of the paternity of R. and therefore requested genetic testing to determine R.'s paternity.<sup>7</sup>

The genetic testing results indicate that Mr. M.'s probability of paternity of R. is 99.99%.<sup>8</sup> CSSD issued an Order Establishing Paternity to Mr. M. on March 25, 2008.<sup>9</sup> Using his 2007 wage and unemployment benefits information as provided to the Alaska Department of Labor and Workforce Development, CSSD served an Administrative Child Support and Medical Support Order on Mr. M. on July 18, 2008.<sup>10</sup> This order set ongoing child support for R. at \$243 per month, effective August 1, 2008, and also charged Mr. M. with arrears of \$1,148.57 for the period from December 2007 through July 2008.<sup>11</sup> He requested an administrative review of the child support order because "I have been unemployed and I currently am in jail."<sup>12</sup> On June 29, 2008, Mr. M. was incarcerated; the record does not reveal his release date.<sup>13</sup>

After completing its administrative review, CSSD issued an Amended Administrative Child and Medical Support Order on September 23, 2008.<sup>14</sup> This amended order set ongoing child support at \$50 per month, effective October 1, 2008, and increased the total arrears due to \$2,570.57 for the period from September 2007 through September 2008, a period beginning three months earlier than in the initial administrative order.<sup>15</sup> On October 27, 2008, Mr. M. filed an appeal and requested a formal hearing. His appeal contended that he did not have as much income in 2007 as CSSD had attributed to him.

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<sup>5</sup> Exhibit 1.

<sup>6</sup> Exhibit 2.

<sup>7</sup> Exhibit 3, p. 1.

<sup>8</sup> Exhibit 4.

<sup>9</sup> Exhibit 5.

<sup>10</sup> Exhibit 6, p. 11.

<sup>11</sup> Exhibit 6, pp. 1-2.

<sup>12</sup> Exhibit 7.

<sup>13</sup> Mr. M. hearing testimony.

<sup>14</sup> Exhibit 10.

<sup>15</sup> During its administrative review, CSSD learned that Ms. L. had submitted an application for child support services on September 19, 2007, not on November 26, 2007, as originally stated in the UIFSA petition. Exhibit 9, p. 1. As a result, CSSD moved the effective date of the arrears forward three months to reflect the date of Ms. L.'s original application.

### III. Discussion

A parent is obligated both by statute and common law to support his or her children.<sup>16</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." 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.<sup>17</sup> In this case, Ms. L. requested child support services in her state of residence on September 19, 2007, so that is the first month Mr. M. is obligated to pay support in this child support case. As the person who filed the appeal, Mr. M. has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.<sup>18</sup>

In its Amended Administrative Child Support and Medical Support Order, CSSD calculated Mr. M.'s child support at \$432 per month for 2007, \$161 per month for January through September of 2008, and \$50 per month for ongoing support as of October 1, 2008, because of his incarceration and lack of employment.<sup>19</sup> At the hearing, CSSD's representative indicated that because Mr. M. was incarcerated as of July 1, 2008, the ongoing amount of \$50 per month should begin on that date instead of the October 1<sup>st</sup> date set forth in the amended order.

Mr. M.'s belief that CSSD overstated his income for 2007 is not supported by the evidence. He testified that in 2007 he made only about \$16,000, but the earnings his employers reported to the Alaska Department of Labor and Workforce Development show he received \$26,808.11.<sup>20</sup> Adding the permanent fund dividend of \$1,654, and unemployment insurance benefits ("UIB") of \$2,448 results in total income of \$30,910.11 for 2007.<sup>21</sup> These income figures result in a child support amount of \$432 per month for 2007.<sup>22</sup> This calculation is correct.

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<sup>16</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>17</sup> 15 AAC 125.105(a)(1)-(2).

<sup>18</sup> 15 AAC 05.030(h).

<sup>19</sup> Exhibit 10, pp. 6-12.

<sup>20</sup> Exhibit 12.

<sup>21</sup> Exhibit 10, pg. 6.

<sup>22</sup> *Id.*

For 2008, CSSD used Mr. M.'s wage, PFD and UIB data to estimate his total income at \$9,904 for the year, which results in a child support calculation of \$161 per month.<sup>23</sup> CSSD applied this amount to the period from January through June 2008 because as of July 1, 2008, Mr. M. was incarcerated and no longer earning wages. This calculation is also correct, and CSSD's use of it only through June 2008 is appropriate given Mr. M.'s incarceration. Likewise, the ongoing amount of \$50 per month as of July 1, 2008, is correct.

The second issue raised by this appeal concerns direct payment credits. 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.<sup>24</sup> An obligor who requests such credit must prove by a preponderance of the evidence he or she actually made the payments.<sup>25</sup> CSSD's amended order gave Mr. M. credit for child support paid directly to the custodian in the amount of \$606.43 between the months of September 2007 and December 2007, based on Ms. L.'s report of payments he made.<sup>26</sup> Any payments Mr. M. made before September 2007 cannot be credited because that is the first month support is due under this order. Accordingly, Mr. M. is entitled to the credit of \$606.43 that CSSD gave him in its amended order.

#### **IV. Conclusion**

Mr. M. has not met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. Other than the minor adjustment of changing the effective date of the \$50 per month ongoing support amount to July 1, 2008 rather than October 1, 2008, CSSD's determination should be adopted.

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

1. Mr. M. is liable for child support in the amount of \$432 per month for September 2007 through December 2007; \$161 per month for January 2008 through June 2008; and \$50 per month, effective July 1, 2008, and ongoing;

2. Mr. M. is entitled to a credit for direct payments made to Ms. L. in the total amount of \$606.43 for the period from September 2007 through December 2007.

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<sup>23</sup> Exhibit 10, p. 7.

<sup>24</sup> AS 25.27.020(b); 15 AAC 125.105(b).

<sup>25</sup> *Id.*

<sup>26</sup> Exhibit 9, p. 2.

3. All other provisions of CSSD's September 23, 2008, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 25<sup>th</sup> day of February, 2009.

By: Signed  
James T. Stanley  
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 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.]