

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

IN THE MATTER OF:)	
)	OAH No. 09-0107-CSS
E. I.)	CSSD No. 001133608
_____)	

DECISION AND ORDER

I. Introduction

The obligor, E. I., appealed an Amended Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 17, 2009. The child is L., DOB 00/00/04, the custodian of record is A. R. Q.

The formal hearing was held on March 11, 2009. Mr. I. appeared by telephone; Ms. Q. did not participate. Erinn Brian and Andrew Rawls, Child Support Specialists, represented CSSD. The hearing was recorded. The record closed on April 8, 2009.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Based on the record and after careful consideration, CSSD's Amended Modified Administrative Child Support and Medical Support Order is affirmed, with one adjustment because Mr. I. had custody of the child from mid-November 2008 through mid-January 2009. Mr. I.'s mother assumed custody at that time and began receiving Native Family Assistance on March 3, 2009. Thus, Mr. I. is not liable for support from November 2008 through February 2009.

II. Facts

A. Procedural Background

Mr. I.'s child support obligation for L. was set at \$50 per month in 2005.¹ On August 14, 2008, Ms. Q. requested a modification review.² On August 22, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. I. did not respond to the request for income information.⁴ After issuing a modified order, which the agency subsequently corrected, on February 17, 2009, CSSD issued an Amended Modified

¹ Exh. 5 at pg. 4.
² Exh. 1.
³ Exh. 2.
⁴ Pre-hearing brief at pg. 1.

Administrative Child Support and Medical Support Order that set Mr. I.'s modified ongoing child support at \$162 per month for one child, effective September 1, 2008.⁵ Mr. I. filed an appeal on February 9, 2009, asserting he was unemployed and that he had the child L. in his custody.⁶

B. Material Facts

Mr. I. and Ms. Q. are the parents of L., DOB 00/00/04. L. was previously in Ms. Q.'s custody but she recently had another child so the custodian contacted Mr. I. and asked him for assistance.⁷ He assumed custody of L. in November 2008 and had the child until January 20, 2009 when he was incarcerated.⁸ At that time, Mr. I.'s mother E. S., took over caring for L. and moved him to her home in Fairbanks.⁹ L. began receiving Native Family Assistance on March 3, 2009.¹⁰

Mr. I.'s incarceration began on January 20, 2009. He was out of jail briefly from February 11-18, 2009, but he returned and at the time of the hearing was awaiting a court proceeding. He said he hoped to be out soon but had not yet gone to trial. The reason for his incarceration is unknown.

Mr. I. is a laborer and works for the North Slope Borough School District and the local housing authority. In 2008, he received earnings of \$9,155.06 during the second, third and fourth quarters of the year.¹¹ Mr. I. did not receive a 2008 PFD but the reason was not addressed at the hearing.¹²

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹³ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." Child support orders may be modified upon a showing

⁵ Exhs. 3-5.

⁶ Exh. 6.

⁷ Except where noted, the facts were taken from Mr. I.'s testimony.

⁸ Testimony of Mr. I.; Exhs. 9 & 10.

⁹ Exh. 9.

¹⁰ Exh. 11.

¹¹ Exh. 8.

¹² *Id.* It is believed he was denied because of a period of incarceration, but that cannot be confirmed.

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

of “good cause and material change in circumstances.”¹⁴ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁵ The person who filed the appeal, in this case, Mr. I., has the burden of proving by a preponderance of the evidence that the agency’s child support determination is incorrect.¹⁶

CSSD calculated Mr. I.’s modified child support at \$162 per month, based on an extrapolation of his actual 2008 earnings to an annual figure of \$10,713.85.¹⁷ This is a correct estimation of his annual earnings. Mr. I. did not know how long he would be incarcerated because at the time of the hearing he hoped to be released soon. In the event he is convicted or enters a plea agreement that results in longer term incarceration, Mr. I. should request another modification in order to have his ongoing support amount set at \$50 per month, the lowest amount allowable. Until such time as more is known about his status within the criminal justice system, Mr. I.’s modified child support should be calculated from his actual income.

This modification is effective on September 1, 2008, but Mr. I. is not liable for support for the entire time period that has gone by since then. He assumed custody in mid-November 2008 and had L. until January 20, 2009, at which time his mother, Ms. S., took over care of the child. On March 3, 2009, Ms. S. began receiving Native Family Assistance benefits on L.’s behalf.

Mr. I. believes that he is not obligated to pay support for L. during all of the time period the child is with Mr. I.’s mother. This is incorrect. A noncustodial parent is obligated to reimburse the state for periods of time in which the child received public assistance benefits.¹⁸ This is so even if the person with custody of the child is a member of the obligor’s family. In general, CSSD collects support from the date public assistance or foster care began to be provided on behalf of the child(ren).¹⁹ Since Ms. S. began getting Native assistance on March 3,

¹⁴ AS 25.27.190(e).
¹⁵ 15 AAC 125.321(d).
¹⁶ 15 AAC 05.030(h).
¹⁷ Exh. 3 at pg. 6.
¹⁸ AS 25.27.120(a).
¹⁹ 15 AAC 125.105(a)(1)-(2).

2009,²⁰ CSSD may charge Mr. I. support as of March 2009 as reimbursement for those benefits Ms. S. receives on L.'s behalf.

In summary, Mr. I. is not liable for support from November 2008 through February 2009. But as long as his mother receives some form of public assistance on L.'s behalf, Mr. I. is liable for support for that time period.

IV. Conclusion

Mr. I. met his burden of proving by a preponderance of the evidence that CSSD's Amended Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). He is not liable for support from November 2008 through February 2009 because either he had custody of L. or his mother had custody but had not yet applied for public assistance. However, Mr. I. is liable for support as of March 2009 because Ms. S. began to receive assistance at that time. Other than the adjustment for Mr. I. not having to pay support from November 2008 through February 2009, CSSD's order should be affirmed.

V. Child Support Order

- CSSD's February 17, 2009, Amended Modified Administrative Child Support and Medical Support Order is affirmed, with one exception: Mr. I. is not liable for support from November 2008 through February 2009;
- All other provisions of the Amended Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 2nd day of June, 2009.

By: Signed
Kay L. Howard
Administrative Law Judge

²⁰ Exh. 11.

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 19th day of June, 2009.

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

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