

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

IN THE MATTER OF:)
) OAH No. 09-0120-CSS
 F. P. T.) CSSD No. 001153560
_____)

DECISION AND ORDER

I. Introduction

This case involves the Obligor F. P. T.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 16, 2009. The Obligee child in this case is S., DOB 00/00/08.

The formal hearing was held on March 23, 2009. Mr. T. appeared by telephone; the custodian, L. L. G., appeared in person at the hearing. Andrew Rawls and Erinn Brian, Child Support Specialists, represented CSSD. The hearing was tape-recorded. The record closed on March 23, 2009.

Based on the record and after careful consideration, the recommendation CSSD made during the hearing to set Mr. T.'s child support set at \$62 per month for May 2008 through December 2008, and \$50 per month, effective January 1, 2009, and ongoing, is adopted.

II. Facts

A. Procedural Background

Ms. G. applied for child support services on May 14, 2008.¹ On June 11, 2008, CSSD served a Notice of Paternity and Financial Responsibility on Mr. T.² He responded³ and subsequent genetic tests revealed his probability of paternity of S. is 99.99%.⁴ CSSD issued an Order Establishing Paternity on September 10, 2008.⁵ On November 15, 2008, CSSD served an Administrative Child Support and Medical Support Order on Mr. T.⁶ He requested an

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exh. 5.
6 Exh. 6.

administrative review and provided additional information.⁷ On January 16, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. T.'s ongoing child support at \$139 per month, with arrears of \$635 for the period from May 2008 through January 2009.⁸ Mr. T. filed an appeal on February 24, 2009, asserting he is a full-time student with no job and he will be graduating this year.⁹

B. Material Facts

At the time of the hearing, Mr. T. was a senior at Grambling State University in Louisiana, taking 18 credit hours. He indicated he would graduate on May 1, 2009 with a degree in Hotel and Business Management and he planned to return to Alaska to begin working. He paid for his schooling with various loans and grants and supported himself with a \$915 per month children's insurance benefit (CIB) from the Veterans Administration (VA) due to his father being disabled.¹⁰ Also, Mr. T. earned a nominal amount of money plowing snow and working at a local motel while on breaks from school. He may be able to return to the motel to work after graduating.

In 2008, Mr. T.'s total income was \$3,778, including the PFD and energy rebate.¹¹ This income figure results in a child support amount of \$62 per month.¹² For 2009, CSSD initially calculated his child support at \$139 per month.¹³ CSSD used annual income of \$6,812 for this calculation, which CSSD imputed to him based on the agency's assumption that Mr. T. would work in the Lower 48 for one-half year after graduation, paid at minimum wage.¹⁴

Ms. G. receives public assistance; she and S. live with the custodian's parents in Alaska. She has been attending the Career Academy on a part-time basis studying Insurance Billing and Coding. She, too, expected to finish school in May 2009.

⁷ Exhs. 7-9.

⁸ Exh. 10.

⁹ Exh. 11.

¹⁰ CSSD indicated that under VA rules, the CIB may not be considered as income to the recipient.

¹¹ Exh. 10 at pg. 6.

¹² *Id.*

¹³ Exh. 10 at pg. 7.

¹⁴ *Id.*

III. Discussion

Mr. T. is challenging the calculation of his child support amount. The person who filed the appeal, in this case, Mr. T., has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.¹⁵

A parent is obligated both by statute and at common law to support his or her children.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).¹⁷ In this case, Ms. G. requested child support services in May 2008, so that is the first month Mr. T. is obligated to pay support in this administrative child support action.

Civil Rule 90.3(a)(1) provides that an Obligor's child support is to be calculated from his or her "total income from all sources," minus mandatory deductions. CSSD initially calculated Mr. T.'s child support at \$62 per month for 2008 and \$139 per month for 2009. During the hearing, CSSD changed its position regarding the obligor's 2009 calculation. The agency stated that since he has not been employed in 2009 and would not be employed until he returned to Alaska and began working, Mr. T.'s 2009 child support should be set at the minimum amount of \$50 per month, which he should petition to modify after he begins working again. Ms. G. did not object to this approach.

CSSD's recommendation is reasonable and will be adopted. Mr. T. is at the end of his college career and will be entering the work force soon. His child support obligation should be set in an amount that is realistic and reflects his ability to pay support *at this time*. Upon his entering the work force, he should petition for modification of his child support amount.

IV. Conclusion

Mr. T. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). His child support should be set at \$62 per month for 2008 and \$50 per month for 2009, to be modified as soon as practical after he returns to Alaska and enters the work force.

¹⁵ 15 AAC 05.030(h).

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

¹⁷ 15 AAC 125.105(a)(1)-(2).

V. Child Support Order

- Mr. T. is liable for child support in the amount of \$62 per month for the period from May 2008 through December 2008; and \$50 per month, effective January 1, 2009, and ongoing;
- All other provisions of CSSD's January 16, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 21st day of May, 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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 8th 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.]