

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

IN THE MATTER OF)
)
 J. P.) Case No. OAH-09-0219-CSS
) CSSD Case Nos. 001151507/001153417

DECISION & ORDER

I. Introduction

The obligor, J. P., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on March 24, 2009. Mr. P. appeared by telephone at a hearing held on May 7, 2009. Erinn Brian represented CSSD by telephone. The child is M. Y. P. (DOB 00/00/07).

Mr. P.'s arrears for one child are set at \$81 per month for the last two months of 2007, \$215 per month for all of 2008, and \$50 per month for the first two months of 2009. Mr. P. is not obligated to pay any arrears or ongoing support for any times after the termination of his parental rights.

II. Facts

The child in this case, M. P., was born on 00/00/07. Before the end of November, 2007, M. was in state custody and receiving public assistance. Mr. P. consented to M.'s adoption on December 15, 2008. CSSD asserts that M. was adopted and that Mr. P.'s parental rights were terminated on February 26, 2009, although it has been unable to produce any documentation of the fact.

The parties agree that the calculations at Exhibit 5, page 8 correctly represent Mr. P.'s income for 2007, and that they correctly set Mr. P.'s support obligation for 2007 at \$81.00 per month. The parties agree that the calculations at Exhibit 5, page 9, correctly reflect Mr. P.'s income and support obligation for 2008, which is \$215 per month. Mr. P. testified that he had been incarcerated from December 18, 2008, until January 26, 2009, and that he was unable to earn any income during that period.

Mr. P. also testified that during the months of December, 2007, and January, 2008, M. was living with her birth mother, C. P. Mr. P. testified that during each of these two months he paid \$1200 for Ms. P.'s rent, and that he also paid her power bill and gas bill.

III. Discussion

Mr. P. identified five specific issues in his appeal, but he testified at the hearing that his principal concern was that the amounts of income that CSSD had attributed to him in Exhibit 1, page 9, and Exhibit 7, pages 1 and 2, were too high. In Exhibit 1, page 9, CSSD had set Mr. P.'s

wage income at \$14,872.00, based on Alaska minimum wages. In Exhibit 5, page 9, CSSD set Mr. P.'s wage income for 2008 at \$10,478.38, based on information reported to the Department of Labor. While Mr. P. initially estimated his annual wage income being slightly lower, he did not dispute this figure. In Exhibit 7, page 1, CSSD had calculated Mr. P.'s wage income for 2008 to be \$13,157.38, based on Department of Labor data. At the hearing, CSSD stated that this later figure appeared to be incorrect, and that \$10,478.38 was the actual amount reported to the Department of Labor for 2008.

The order in this case covers only the sixteen months from the time that M. was born to the time that Mr. P.'s support obligation ended. The first two months of this period were in 2007, and there is no dispute that CSSD correctly set Mr. P.'s support obligation at \$81 per month for those two months. The largest part of the period is the twelve months in 2007. The parties agree that for those months support should be calculated based on the wage figures in Exhibit 5, page 9. There is no dispute that CSSD has correctly calculated Mr. P.'s support obligation to be \$215 per month for 2008.

For the final two months of the period, which are January and February of 2009, CSSD calculated support based on Mr. P.'s potential income, calculated based on Alaska's minimum wage. Under this calculation, support would be \$249 per month.¹ Mr. P. correctly argues that he is unlikely to earn full-time wages for all of 2009, particularly in light of the fact that he spent the first 26 days of the year in jail and did not earn significant income in February. While income is generally calculated on annual basis, Mr. P.'s support obligation ended after February of this year. Therefore, his support obligation should be calculated using an annualized income figure based on the first two months of the year. Because Mr. P. had no significant income in January or February of 2009, and was not voluntarily or unreasonably underemployed, his support obligation for January and February of 2009 should be set at \$50 per month.

Mr. P. argues that he should not be required to pay support for the months of December, 2007, and January, 2008, because M. was with Ms. P. and Mr. P. provided financial support. Because M. received public assistance for these months and Mr. P. was not in the home with her, Mr. P. is obligated to pay support. However, Mr. P.'s payment of Ms. P.'s expenses could be regarded as a direct payment of support.

According to 15 AAC 125.465(a), CSSD

¹ Exhibit 5, page 10.
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will give credit for direct payments against an obligor's child support obligation established by a support order if the obligor provides clear and convincing evidence that the payment was made to the custodial parent and that both parents intended the payment to be a direct payment of child support. Evidence of direct payments includes

- (1) copies of the front and back of cancelled checks and money orders;
- (2) bank statements indicating deposits or electronic funds transfers;
- (3) receipts signed by the custodial parent; and
- (4) signed, notarized statements by the custodial parent, the obligor, or a third party with personal knowledge of the direct payments.

There is no evidence in the record regarding Ms. P.'s understanding of the reasons that Mr. P. paid her rent for the two months in question. Mr. P.'s testimony that he paid Ms. P.'s rent and utilities for a two-month period does not constitute clear and convincing evidence that both parents intended the payments to be a direct payment of child support.

IV. Conclusion

Mr. P.'s arrears for one child should be set at \$81 per month for the last two months of 2007, \$215 per month for all of 2008, and \$50 per month for the first two months of 2009. Because his parental rights have been terminated, Mr. P. has no ongoing support obligation.

V. Order

IT IS HEREBY ORDERED that arrears in this case be set at the following monthly amounts for one child:

November – December 2007:	\$81.00
January – December 2008:	\$215.00
January – February 2009:	\$50.00

Because his parental rights have been terminated, Mr. P. owes no ongoing support obligation. All other terms of the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on March 24, 2009, shall remain in effect.

DATED this 31st day of July, 2009.

By: Signed
DALE WHITNEY
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of August, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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