

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

IN THE MATTER OF: )  
 )  
 J. D. W. ) OAH No. 09-0333-CSS  
 ) CSSD No. 001152994  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The obligor, J. D. W., appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 25, 2009. The Obligee child is A., DOB 00/00/07.

The formal hearing was held on July 6, 2009. Mr. W. did not participate in the hearing.<sup>1</sup> The custodian, S. S. E., appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on July 6, 2009, as discussed below.

Based on the record as a whole and after careful consideration, Mr. W.' child support is set at \$431 per month for the period from March 2008 through December 2008, and \$363 per month for January 2009 through July 2009, and ongoing.

**II. Facts**

**A. Proceedings**

Ms. E. applied for child support services for A. on March 26, 2008, after which CSSD established Mr. W.' paternity of the child via genetic testing that showed his probability of paternity is 99.99%.<sup>2</sup> On December 16, 2008, CSSD served an Administrative Child Support and Medical Support Order (dated October 16, 2008) on Mr. W.<sup>3</sup> He requested an administrative review and provided income information.<sup>4</sup> On March 25, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. W.' ongoing child support at \$466 per month, with arrears of \$4,708 for the period from March 2008 through April

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<sup>1</sup> Two calls were placed to Mr. W.' telephone numbers of record. The first call, placed to his personal number, went unanswered. The second call was answered by Sears & Roebuck, Mr. W.' employer. The person who took the call stated Mr. W. no longer works at Sears.

<sup>2</sup> Exhs. 1-4.

<sup>3</sup> Exh. 5.

2009.<sup>5</sup> Mr. W. filed an appeal on April 24, 2009,<sup>6</sup> asserting his income has been reduced because of the economy, his fiancé and son live in the home, he did not receive the PFD in 2008, and he paid child support directly to the custodian in 2008.

The Office of Administrative Hearings (“OAH”) sent the parties a notice of the date and time for the hearing by certified mail. Ms. E. received and signed for her notice, but Mr. W.’ has not been returned as of the date of this decision. In the event he did receive the notice and it was not returned, Mr. W. also did not call the OAH to provide a telephone number where he could be reached for the hearing. Just before the hearing started two calls were placed to the telephone numbers of record for Mr. W. The call to his personal number was not answered. The second telephone number turned out to belong to his employer, Sears and Roebuck in Fairbanks, but the person who answered stated Mr. W. no longer works there. Because Mr. W.’ notice was sent to the address he provided with his appeal,<sup>7</sup> service of the notice was found to be effective and the hearing was conducted without his participation.<sup>8</sup>

At the hearing, Ms. E. testified Mr. W. was scheduled to graduate from the University of Alaska at Fairbanks in May 2009 and that he told her about two months before the hearing that he was moving to California, where his fiancé’s extended family lives. Also, Ms. E. verified that Mr. W. made direct payments to her of \$150 per month from April 2008 through December 2008, all of which total \$1,350.

CSSD confirmed that Mr. W. did not receive a PFD in 2008 because he came to Alaska to go to school and that he most likely would not receive one in 2009, either. After the hearing, CSSD revised Mr. W.’ 2008 child support calculation to \$431 per month.<sup>9</sup> This new calculation incorporated Mr. W.’ actual income information as reported by the Alaska Department of Labor and Workforce Development,<sup>10</sup> eliminated the PFD and gave the obligor an additional deduction

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<sup>4</sup> Exhs. 6-8.

<sup>5</sup> Exh. 10.

<sup>6</sup> Exh. 8.

<sup>7</sup> See Exh. 11 at pg. 1. Mr. W.’ appeal form originally had a different street address, city and state entered on it that was completely crossed out prior to being submitted to CSSD. This suggests that Mr. W. knew his future address but purposefully failed to provide it to the division.

<sup>8</sup> “If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.” 15 AAC 05.010(c).

<sup>9</sup> Exh. 13 at pgs. 1-2.

<sup>10</sup> In 2008, Mr. W. earned \$39,777.03. Exh. 12.

from income for supporting a prior child in the home.<sup>11</sup> Also, CSSD estimated Mr. W.' 2009 income at \$33,011.68 based on his March 27, 2009, year-to-date paystub and from that prepared a child support calculation for 2009 of \$363 per month.<sup>12</sup>

## **B. Findings**

1. Notice of the date and time for the hearing was sent by certified mail to Mr. W. at his last-known address, but the notice was not returned and Mr. W. did not appear for the hearing;

2. Mr. W. is no longer employed at Sears in Fairbanks and it is more likely than not that he has moved from Alaska and not provided his current address;

3. CSSD correctly calculated Mr. W.' child support at \$431 per month for March 2008 through December 2008, and \$363 per month for January 2009 through July 2009, and ongoing.

## **III. Discussion**

### **A. Failure to appear**

Mr. W. filed an appeal and requested a formal hearing, but he failed to appear for the hearing. Therefore, this decision is issued under the authority of Department of Revenue regulation 15 AAC 05.030(j), which authorizes the entry of a child support decision if the requesting party fails to appear. However, the regulation also requires that the administrative law judge must wait 10 days after the hearing to close the record and issue a decision so as to provide the requesting party the opportunity to show "reasonable cause" for his or her failure to appear.

The hearing in this appeal was held on July 6, 2009. Waiting 10 days to close the record means the decision could not be issued prior to July 16, 2009. However, the undersigned administrative law judge will be on extended leave as of July 10, 2009, so if the decision is not issued before that date, the parties would have to wait up to 2 months for a decision. Another Revenue regulation, 15 AAC 05.030(k), gives the administrative law judge authority to waive the 10-day deadline "if it appears to the officer that strict adherence to the deadline . . . would work an injustice . . . ."

It is more likely than not that Mr. W. will not contact the OAH in the next ten days in order to show reasonable cause for his failure to appear. It appears that he may have crossed out

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<sup>11</sup> Mr. W.' son, M., DOB 00/00/07, and his fiancé live in the home with him. See Exh. 6 at pg. 3.

his future address on the appeal form and inserted his former address so that CSSD would not be able to locate him. Also, Mr. W. did not inform CSSD of his move or provide an updated telephone number. The parties should receive a timely decision in this appeal. Ms. E., in fact, stated she would appreciate the decision being issued sooner rather than later.

Based on these circumstances, the requirement that the record be left open for another 10 days to allow Mr. W. to show reasonable cause for his failure to appear is hereby waived. The record is closed as of July 6, 2009, and this decision may be issued.

#### **B. Child support calculations**

A parent is obligated both by statute and at common law to support his or her children.<sup>13</sup> 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." By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance, foster care or Denali Kid Care was initiated on behalf of the child(ren).<sup>14</sup> In this case, Ms. E. requested child support services in March 2008, so that is the first month for which Mr. W. is obligated to pay support in this administrative child support action.

CSSD calculated Mr. W.' child support obligation for 2008 from his actual income figures and for 2009 from an estimate of his earnings based on his year-to-date income as shown on his March 27, 2009, paystub. CSSD removed the PFD, gave Mr. W. the correct deduction for supporting a prior child in the home and agreed that Mr. W. should be credited with the direct payments he made to Ms. E. in 2008. Thus, all of Mr. W.' appeal issues have been addressed and in the absence of additional evidence on these or any other issues, CSSD's revised calculations are correct.

#### **IV. Conclusion**

Mr. W. 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). CSSD correctly calculated Mr. W.' child support at \$431 per month for March 2008 through December 2008, and \$363 per month for January 2009 through July 2009,

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<sup>12</sup> Exh. 13 at pgs. 3-4.

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

<sup>14</sup> 15 AAC 125.105(a)(1)-(2).

and ongoing, and the division also agreed that Mr. W. is entitled to a credit of \$1,350 for direct payments he made to Ms. E.. Therefore, CSSD's calculations should be adopted.

**V. Child Support Order**

- Mr. W. is liable for child support in the amount of \$431 per month for March 2008 through December 2008, and \$363 per month for January 2009 through July 2009, and ongoing;
- Mr. W. is entitled to a credit for direct payments he made to Ms. E. in the amount of \$150 per month from April 2008 through December 2008, all of which total \$1,350;
- All other provisions of CSSD's March 25, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 7<sup>th</sup> day of July, 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 24<sup>th</sup> day of July, 2009.

By: Signed  
Signature  
Rebecca L. Pauli  
Name  
Administrative Law Judge  
Title

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