

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

IN THE MATTER OF:)

J. L. M.)

OAH No. 09-0403-CSS

CSSD No. 001127788

**ORDER GRANTING MOTION
FOR SUMMARY ADJUDICATION**

On August 14, 2009, Child Support Services Division (CSSD) filed a Motion for Summary Adjudication in this matter. A hearing event took place August 27, 2009. The custodian, K. M., did not participate.¹ The obligor, J. L. M., participated by phone. The obligee child is N. N. M., born 00/00/00. Andrew Rawls represented CSSD.

This case involves a default review. J. M. is the biological mother of N. On November 15, 2004, J. M. parental rights were terminated.² On December 5, 2005, CSSD issued an Administrative Child Support and Medical Support Order.³ This order set Ms. M.'s child support obligation at \$232 per month effective January, 2006, with arrears of \$5,800 from December 2003 through December 2005.⁴ The order was based on a default income amount.

Beginning November 2006, CSSD would receive periodic child support payments. The last payment was received on September 17, 2008 in the amount of \$3,265.⁵ Two months later, on November 6, 2008, Ms. M. filed a Motion to Vacate Default Order.⁶ CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order on July 9, 2009.⁷ The revised order was based on actual income and set Ms. M.'s child support obligation at the minimum allowed by law, \$50 per month, from December 2003 through November 2004, when she was no longer legally obligated to support her biological child.⁸ Ms. M. filed an

¹ Prior to the start of the hearing, Ms. M. was reached by phone and she declined to participate in the proceeding.

² Exhibit 3 at 11, 12.

³ Exhibit 1.

⁴ *Id.*

⁵ Exhibit 6 at 3.

⁶ Exhibit 3.

⁷ Exhibits 4, 5.

⁸ Exhibits 5 at 1, 2 and 6 at 2, 3.

appeal on July 31, 2009, and requested that the overpayment of approximately \$8,274.01 be reimbursed to her.⁹

CSSD's motion for dismissal asserts that the agency should be granted summary adjudication because Ms. M.'s appeal does not state a claim for which there is any relief and the agency is entitled to judgment as a matter of law. CSSD argued that regardless of any overpayment made on Ms. M.'s obligation, the agency is not allowed to reduce her account below zero, or to refund any overpayments as a result of completing a vacate action. CSSD asserted it is prohibited by statute from refunding any of Ms. M.'s overpayment.

This is a default review action in which CSSD recalculated Ms. M.'s child support order based on her actual income. As a result of the default review, it was determined that Ms. M. had made payments of \$8,943.01 on a debt of \$672, for a total overpayment of \$8,247.01.¹⁰ It is the overpayment that Ms. M. has requested be reimbursed to her.

CSSD is correct in stating it cannot refund Mr. M.'s overpayment. CSSD's statutes and regulations state that when conducting a default review, CSSD will adjust the Obligor's account to reflect his or her new child support obligation, but if the account balance goes below zero, CSSD may not refund any money previously collected prior to the petition for default review that exceeds the new total owed.¹¹

Therefore, CSSD is entitled to summary judgment because Ms. M. did not state a claim for which relief can be granted and she did not present any evidence giving rise to material issues of fact. In the absence of material issues of fact, Ms. M. is not entitled to an evidentiary hearing.¹² CSSD's Motion for Summary Adjudication should be granted, and Ms. M.'s appeal should be dismissed.

⁹ Exhibit 6.

¹⁰ Exhibit 6 at 2, 3.

¹¹ AS 25.27.195(d); 15 AAC 125.121(i).

¹² See *Church v. State, Dep't of Revenue*, 973 P.2d 1125 (Alaska 1999); *Douglas v. State, Dep't of Revenue*, 880 P.2d 113, 117 (Alaska 1994); and *Smith v. State, Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990).

THEREFORE IT IS ORDERED:

- CSSD's August 14, 2009, Motion for Summary Adjudication is granted;
- Ms. M.'s appeal is dismissed.

DATED this 27th day of August, 2009.

By: Signed
Rebecca L. Pauli
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 14th day of September, 2009.

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

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