

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

IN THE MATTER OF:)

A. C.)

) OAH No. 09-0504-CSS

) CSSD No. 001106423

DECISION AND ORDER

I. Introduction

The obligor, A. C., appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 14, 2009. The obligee child is B., who is nine years old.

The formal hearing was held on October 12, 2009. Mr. C. appeared by telephone with his attorney, David Roghair; the custodian of record, N. M., did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 12, 2009.

Based on the record as a whole and after careful consideration, Mr. C.'s child support obligation for B. is set at \$295 per month, effective January 1, 2009. Mr. C. is not entitled to a credit for direct payments for the purchases he made for B. while she was in his or his mother's care.

II. Facts

A. History

Ms. M. applied for child support services on B.'s behalf in January 2009.² CSSD established Mr. C.'s paternity of the child on May 28, 2009.³ On June 16, 2009, CSSD served an Administrative Child and Medical Support Order on Mr. C.⁴ He requested an administrative review and provided income information.⁵ Following the administrative review, CSSD issued an Amended Administrative Child Support and Medical Support Order on August 14, 2009, that

¹ Two telephone calls were placed to Ms. M.'s contact numbers of record but she did not answer either one. The first call was answered by a voicemail message; the second number is no longer in service.

² Pre-hearing brief at pg. 1; *see also* Exh. 11 at pg. 7.

³ Exh. 5.

⁴ Exh. 7.

⁵ Exhs. 8-10.

set Mr. C.'s ongoing support at \$306 per month, with arrears of \$2,142 for the period from January 2009 through August 2009.⁶ Mr. C. filed an appeal and requested a formal hearing on September 14, 2009, asserting primarily that he should receive credit for the expenditures he made on B.'s behalf and that a custody action is pending in court.⁷

B. Material Facts

Mr. C. is employed as a cook at a restaurant in Barrow, Alaska. Mr. C. works six to seven months per year at the restaurant. He takes the rest of the year off because his wife and two-year-old daughter live in California and he goes there to spend time with them. His wife does not work, so the family has been supplementing his restaurant income with a small inheritance Mr. C.'s wife received in 2008. Mr. C. plans to continue working in Barrow but he wants to get another job to increase his income. He has not applied for work in California or Anchorage.

In 2008, Mr. C. earned a total of \$11,970.72 during three quarters of employment there.⁸ He did not work during the third quarter of 2008. Mr. C. did, however, work all four quarters in 2007, during which time he earned a total of \$16,504.⁹ Apparently his wife was with him in Barrow that year, but she did not like the cold weather and returned to California.

Mr. C. has regular expenses of approximately \$1,695 per month. Of this total, he spends approximately \$100 for rent in Barrow. The remainder of his expenses goes toward the cost of supporting his wife and daughter in California: \$790 for rent; \$200 for food; \$150 for utilities; \$300 for a car payment; \$50 for gasoline; \$80 for auto insurance; and \$25 for medical bills. None of the family members have medical insurance and Mr. C. has an outstanding hospital bill of \$2,000. He has a Wal-Mart card but does not know the amount owing on it and he owes attorney's fees.

Ms. M. and B. live in Alaska. B. spends weekends and school vacations with her paternal grandmother on a regular basis. In 2009, for example, Mr. C. flew to Anchorage and picked up B. for a six-week vacation in California. When they came back to Alaska, Mr. C. left B. with his mother, who then returned the child to Ms. M. when the visitation was finished.

⁶ Exh. 11.

⁷ Exh. 12.

⁸ Exh. 13.

⁹ *Id.*

The parties are currently involved in custody litigation in the Barrow Superior Court. Mr. C. was granted temporary custody for a two-month time period during the summer of 2009, possibly in order to take B. to California, although he testified he got temporary custody because Ms. M. was in jail. The record is unclear on this issue but custody apparently has returned to Ms. M. and Mr. C.'s mother has visitation with B. on Friday and Saturday nights. CSSD zeroed out Mr. C.'s support obligation for July 2009 because B. was in his custody the entire month.¹⁰

III. Discussion

Mr. C.'s primary argument is that he is entitled to a credit against his child support obligation for the funds he has given his mother for B. and expended himself since this child support case arose. He provided copies of receipts he claims were for items his mother purchased for B. from money he sent to his mother. The receipts appear to be for clothing items, shoes, glasses and a recorder, a musical instrument.¹¹ Mr. C. acknowledged his child support obligation for B. should be based on his 2008 income.

A parent is obligated both by statute and at common law to support his or her children.¹² This obligation begins when the child is born,¹³ but CSSD only collects support from the date the custodial parent requested child support services, or the date public assistance or other public benefits were initiated on behalf of the child(ren).¹⁴ The person who filed the appeal, in this case, Mr. C., has the burden of proving by a preponderance of the evidence that the agency's amended order was incorrect.¹⁵

CSSD may give an obligor parent credit for direct payments made on behalf of a child for whom support must be paid. There are certain restrictions on the credit, the primary one being that the funds expended on the child's behalf must be given either to the child or to the custodian. CSSD's statutes state that:

[i]n determining the amount of money an obligor must pay to satisfy the obligor's immediate duty of support, the agency shall consider all payments made by the

¹⁰ See Exh. 11 at pg. 7.

¹¹ Exhs. A-D.

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁴ 15 AAC 125.105(a)(1)-(2). For public assistance cases, CSSD may only collect support for up to six years prior to service on the obligor of notice of his or her support obligation. 15 AAC 125.105(a)(1).

¹⁵ 15 AAC 05.030(h).

obligor *directly to the obligee or to the obligee's custodian* before the time the obligor is ordered to make payments through the agency. ...¹⁶

CSSD's regulations also address the direct credit issue, but they require that both parties agree the payment is for child support:

The agency 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.¹⁷

In this case, Mr. C. is not entitled to a credit for making direct payments on B.'s behalf for money he gave to his mother to purchase items for the child. Although she often has B. for visitation, the obligor's mother is not the custodian of the child for purposes of understanding AS 25.27.020(b). That would be Ms. M., the parent to whom support is owed in this case. Another reason Mr. C. is not entitled to a credit for his expenditures is that credit is generally not given for voluntary payments made on behalf of the child(ren) by the obligor parent. As recognized by the Alaska Supreme Court, this essentially interferes with the custodial parent's ability to determine how the child support is to be utilized.¹⁸

Finally, Mr. C. did not challenge CSSD's child support calculation, at least as it concerns his income figures. However, an examination of the calculation reveals that CSSD's computer inserted the 2008 PFD amount, which, at \$2,069 was much higher than the 2009 PFD amount of \$1,305.¹⁹ The calculation has been adjusted and it now yields a correct child support amount of \$295 per month.²⁰

IV. Conclusion

Mr. C. did not meet his burden of proving that the Amended Administrative Child Support and Medical Support Order was incorrect. He did not object to CSSD's calculation of his monthly child support amount, so it should be adopted, with the one minor adjustment to

¹⁶ AS 25.27.020(b) (emphasis added).

¹⁷ 15 AAC 125.465(a).

¹⁸ *CSSD v. Campbell*, 931 P.2d 416 (Alaska 1997).

¹⁹ The child support worksheet at page 6 of Exhibit 11 indicates that the calculation was performed on August 14, 2009, before the amount of the 2009 PFD was announced, so it was not an error for the 2008 PFD to be used. However, now that the amount of the 2009 PFD figure is certain, the calculation should be cleaned up to reflect the correct amount.

²⁰ See Attachment A.

reflect the correct 2009 PFD amount. Mr. C. is not entitled to credit for direct payments made to the custodian.

V. Child Support Order

- Mr. C. is liable for child support for B. in the amount of \$295 per month, effective January 1, 2009, and ongoing;
- Mr. C. is not liable for child support for the month of July 2009 because B. was in his custody;
- All other provisions of CSSD's August 14, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 23rd day of October, 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 9th day of November, 2009.

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

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