



INVESTIGATIVE REPORT

Finding of Record and Closure
Public Version
Ombudsman Complaint A2008-1274
October 31, 2008

*Edited to remove information that would identify the complainant
and information that is confidential by law.*

SUMMARY OF THE COMPLAINT

A South Central Alaska woman contacted the Office of the Ombudsman on September 3, 2008, to complain that the Child Support Services Division (CSSD) erroneously collected child support payments from her under an invalid support order, resulting in overpayment of her account. She told the ombudsman that she was seeking “justice” and to have the agency repay her the money it had over-collected.

The complainant also alleged that CSSD arbitrarily modified the support order in her case “on its own motion” and not at either her or her ex-husband’s request. She contended that the agency had no grounds to seek modification of her support order.

The ombudsman opened an investigation into the following allegations stated in terms that conform to AS 24.55.150:

Allegation 1: Contrary to Law - CSSD collected child support payments from the complainant under an invalid support order.

Allegation 2: No Grounds for Agency Action - CSSD modified the child support order in the complainant’s case on its motion.

Assistant Ombudsman Charlise Huhndorf-Arend investigated this complaint. The ombudsman investigator issued written notice of investigation to CSSD on September 8, 2008.

During the investigation, the ombudsman investigator discussed the complaint at length with Child Support Specialist Will Hauser in the CSSD Complaint Resolution Office. She also requested and reviewed all the support orders issued in the case, the CSSD

Manual Account Audit dated February 7, 2007, as well as several other documents from the complainant's CSSD case file. In addition, she reviewed relevant Alaska Statutes, Alaska Administrative Codes, and CSSD Policy and Procedure.

INVESTIGATION

The complainant and her ex-husband were married and had two children together. Their oldest child was born in 1979 and their younger child was born in 1981. The couple divorced in 1984.

The Alaska Superior Court entered a Judgment and Decree finalizing the couple's divorce and granting the husband sole legal custody of the children. The order also established a support obligation for the complainant to pay \$25 per month per child effective in May 1984.

In 1996, CSSD initiated review and modification of the original support order after receiving notification from the State of Washington that the children's father had applied for public assistance benefits on behalf of the children. An affidavit provided by the Washington Division of Child Support (DCS) stated that the children received public assistance benefits in the State of Washington for one year starting in 1995.

The father and the children lived in the State of Washington, and CSSD enforced the Alaska support order at the request of the Washington DCS. CSSD had jurisdiction and was responsible for enforcing and modifying the support order because it was an Alaska support order and because the obligor, the complainant in this case, resided in Alaska.

When the father applied for public assistance benefits, he was required by federal and state law as a condition of eligibility to assign to the state any rights he had to child support. The "assignment of rights" also included the right of the state to seek review and modification of the existing support order.

In 1997, the Alaska Superior Court issued an Order for Modification of Child Support. The order modified the original support order and established a new support obligation for the complainant to pay \$1,620 per month for two children or \$1,200 per month for one child effective in September 1996.

The court "imputed" income to the complainant to determine the support obligation amount and issued a "sanctions" support order against her because she failed to provide proof of income during the modification process.

Imputed income is a method courts use to assign an income to a parent for the purpose of child support. If the court finds that either parent is, without just cause, voluntarily underemployed, unemployed, or not reporting income, then the court will impute income to that parent. The court will use this imputed income to calculate the child support owed. At a minimum, imputed income is often calculated as the amount of income a person

could have earned from a full-time minimum wage job. The court will use this imputed income to calculate the child support owed.

Therefore, the modified support obligation amount was not necessarily a reflection of the complainant's actual ability to pay.

The couple's oldest son emancipated in 1997, and the complainant's obligation to pay child support for him ceased. The couple's youngest son emancipated in 1999 and the complainant's obligation to pay child support for him ceased.

In 2006, the complainant filed a motion requesting that the court set aside the modified support order dated in 1997, because she said she had not been properly served with the modification paperwork. In January 2007, the Alaska Superior Court issued an Order vacating the original modified support order dated in response to the complainant's motion. The order read, in part:

Good cause being shown, IT IS SO ORDERED. The "Order for Modification of Child Support" dated (*removed to protect complainant's confidentiality*) 1997 is hereby VACATED. It will be replaced with a new DR-301 Order, with the same effective date.

A "DR-301 Order" is an Order for Modification of Child Support that is issued on a standardized fill-in court form titled DR-301. The form is required by the court to modify an existing court order for child support. The form is nine pages in length and provides detailed information needed to calculate child support awards in accordance with Alaska Civil Rule 90.3.

On the same date the Alaska Superior Court also issued an Order for Modification of Child Support. This order modified the original support order and established a new support obligation for the complainant to pay \$50 per month for one or two children effective in September 1996.

Although the court issued an order vacating the original modified support order dated in 1997, the original modified support order was a valid support order during the time that it was in effect, and CSSD was required by law to enforce the order at that time.

In February 2007, CSSD audited the complainant's account after receiving the court orders to recalculate the support obligation and make appropriate adjustments according to the terms of the new orders.

The CSSD Manual Account Audit in 2007 showed that over the years the agency received only sporadic payments from the complainant through garnishment of her Permanent Fund and other funds. CSSD received the first payment in November 1992. CSSD received the last payment in November 2006 prior to the issuance of the court orders in early 2007, vacating the original modified support order and replacing it with a

new modified support order. CSSD forwarded all of the payments it received in this case to the Washington DCS.

The audit also showed that the total adjusted support obligation was \$8,950. This amount was calculated by using the \$50 monthly support obligation amount for the period of 1984 when the original support order became effective, through 1999, when the couple's youngest child emancipated. The total adjusted interest charges were \$8,850.96. The ombudsman investigator noted that a majority of the interest charges, \$7,726.50 to be exact, accrued prior to CSSD receiving the first payment on the case in November 1992. The total adjusted child support debt, which included principal and interest, was \$17,800.96.

CSSD collected and received a total of \$20,642.21. Thus, at the conclusion of the audit, the complainant's account ended up being overpaid in the amount of \$2,841.25.

CSSD Policy 039 establishes how the agency will handle the issue of overpayments. The policy states that CSSD will assist in the recovery of an overpayment if the overpayment was a result of "state error." The policy provides several examples of what CSSD considers state error.

Likewise, the policy states that CSSD will not assist in the recovery of an overpayment if the overpayment was not a result of state error. The policy provides several examples of what CSSD does not consider state error. In particular, the policy provides the following as an example of what CSSD does not consider a state error: "An overpayment caused by a court action, e.g., a retroactive order."

STANDARDS

Alaska Statutes

AS 25.27.020. Duties and Responsibilities of the Agency.

- (a) The agency shall
 - (1) seek enforcement of child support orders of the state in other jurisdictions and shall obtain, enforce, and administer the orders in this state;
 - (2) adopt regulations to carry out the purposes of this chapter and AS 25.25, including regulations that establish
 - . . .
 - (B) subject to AS 25.27.025 and to federal law, a uniform rate of interest on arrearages of support that shall be charged the obligor upon notice if child support payments are 10 or more days overdue
 - (3) administer and enforce AS 25.25 (Uniform Interstate Family Support Act);
 - (4) establish, enforce, and administer child support obligations administratively under this chapter;
 - . . .

(6) disburse support payments collected by the agency to the obligee, together with interest charged under (2)(B) of this subsection;

AS 25.27.045. Determination of Support Obligation.

The agency may appear in an action seeking an award of support on behalf of a child owed a duty of support, or to enforce a spousal support order if a spousal support obligation has been established and if a support obligation, established with respect to a child of that spouse, is also being administered, and may also appear in an action seeking modification of a support order, decree or judgment already entered. Action under this section may be undertaken upon application of an obligee, or at the agency's own discretion if the obligor is liable to the state under AS 25.27.120 (a) or (b).

AS 25.27.120. Obligor Liable for Public Assistance Furnished Obligee.

(a) An obligor is liable to the state in the amount of assistance granted under AS 47.07 and AS 47.27 to a child to whom the obligor owes a duty of support except that, if a support order has been entered, the liability of the obligor for assistance granted under AS 47.27 may not exceed the amount of support provided for in the support order, and, if a medical order of support has been entered, the liability of the obligor for assistance granted under AS 47.07 may not exceed the amount of support provided for in the medical order of support. . . .

Alaska Administrative Codes

15 AAC 125.316. Initiation of Review of Support Orders

. . . .

- (b) The agency may initiate a review of a support order at its own discretion if
- (1) the support order was issued by or may be registered with a tribunal of this state under AS 25.25.609;
 - (2) at least one of the following conditions is met:
 - (A) the support has been assigned to a state;

CSSD Policy and Procedure

CSSD Policy 039, Recovering Overpayments, provides the following definitions:

Overpayment – For the purposes of this policy, an overpayment is a child support payment made by a parent that exceeds the amount of child support owed by the parent. It does not include excess payments made to reimburse public assistance, which can be resolved outside this policy.

State Error – An overpayment is a result of state error when, for example, (1) CSSD fails to properly account for support that has accrued or been paid even though CSSD has the information necessary to correctly account for the support of the payments, e.g., CSSD does not timely terminate or modify a withholding order; or (2) another state agency, such as the Division of Public Assistance, the

Office of Children's Services, or the Division of Juvenile Justice, makes an error, e.g., fails to identify custody or placement changes, or misreports grant amounts.

The following are examples of errors that are not state errors: (1) a failure to give credit for direct payments or similar credits before CSSD knew of the payments or credits or had sufficient documentation to grant the credits; (2) a failure to change support under an order from another state prior to CSSD receiving notice of the order; or (3) *an overpayment caused by a court action, e.g., a retroactive order*. [Emphasis added]

This policy also states:

CSSD will assist in the recovery of overpayments that occur as the result of state error.

FINDINGS OF RECORD AND CLOSURE

The standard used to evaluate all Ombudsman complaints is a preponderance of the evidence. If a preponderance of the evidence indicates that the administrative act took place and the complainant's criticism of it is valid, the allegation will be found justified.

Allegation 1: Contrary to Law, CSSD collected child support payments from the complainant under an invalid support order.

The relevant portions of the Ombudsman Policies and Procedures Manual at 4040(1) discuss the statutory phrase "contrary to law":

Contrary to law means:

(A) failure to comply with statutory or regulatory requirements;

...

(C) failure to comply with valid court orders

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The complainant contended that the modified support order dated February 1997 was invalid because the court later vacated this order in January 2007. She claims that collections made by CSSD under this order were erroneous.

CSSD is the state's child support enforcement agency. CSSD is responsible for locating parents, establishing and modifying child support orders, collecting and distributing support payments, and enforcing orders.

CSSD is required by law to enforce the support provisions of court orders. The court did in fact issue an order vacating the original modified support order and replaced it with a new modified support order with the same effective dates. However, the original modified support order was a valid order during the period that it was in effect, and

CSSD was required by law to enforce it during that time. Therefore, the actions taken by CSSD to collect and distribute payments during the period that the original modified support order was in effect were not in error.

The court action to vacate the original modified support order and replace it with a new modified support order did result in the complainant's account being overpaid. That is because the new modified support order, which had the same effective date as the original modified support order of September 1996, significantly lowered the complainant's monthly support obligation from \$1,620 per month for two children or \$1,200 per month for one child, down to \$50 per month for one or two children.

After receiving the January 2007 court orders, CSSD audited the account to recalculate the complainant's support obligation and make appropriate adjustments according to the terms of the new orders. The CSSD Manual Account Audit showed the complainant's account ended up overpaid in amount of \$2,841.25.

CSSD policy states that the agency is not responsible for assisting obligors in the recovery of an overpayment if the overpayment was not a result of state error. The policy also clearly states that overpayment caused by a court action is not considered state error. Therefore, under existing policy, CSSD is not responsible for assisting the complainant in recovering the overpayment made to her ex-husband. The complainant has the option of attempting to settle the issue of the overpayment directly with her ex-husband, or she can seek a court judgment against him to recover the overpayment.

***Ombudsman's Note:** The Office of the Ombudsman has investigated two complaints in recent years regarding the issue of CSSD overpayments. In those two complaints, (J2003-0031 and J2004-0105) the ombudsman recommended that CSSD assist the complainants in recovering the overpayments. However, the notable difference between those two complaints and the complaint at hand was that in the prior two complaints, the overpayments were in fact a result of CSSD error which is not the situation in this case.*

Allegation 2: No Grounds for Agency Action—CSSD arbitrarily modified the child support order in the complainant's case on its motion.

The relevant portions of the Ombudsman Policies and Procedures Manual at 4040(12) discuss the statutory phrase "no grounds for agency action":

No grounds for agency action means:

The decision is made without reference to any law, that is, when it entirely lacks a legal basis.

The complainant also contends that CSSD had no grounds to modify her support order because neither she nor her ex-husband requested the modification.

Federal and state laws require public assistance applicants to assign any rights a family member may have to child support to the state as a condition of eligibility. The

“assignment of rights” includes the right of the state to seek review and modification of the existing support order.

Alaska Statute 25.27.045 and Alaska Administrative Code 15.125.316 state that CSSD may initiate a review of a support order at its own discretion if support has been assigned to the state. When the ex-husband applied for public assistance benefits, he assigned any rights he had to child support to the state as a condition of eligibility.

Therefore, the actions taken by CSSD to review and modify the original support order while the complainant’s children were receiving public assistance benefits was appropriate and in accordance with law. For that reason, it cannot be said that CSSD’s decision “was made without reference to any law.”

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The ombudsman could not find in this case that the CSSD enforcement, modification, and collection actions violated Alaska law or division policies or procedures. The evidence simply does not support the allegations for the reasons outlined above. Therefore, the ombudsman finds both of these allegations to be ***not supported by the evidence.***

Because the ombudsman found both allegations to be unsupported, we have proposed no recommendations. This complaint is being closed as **unsupported.**