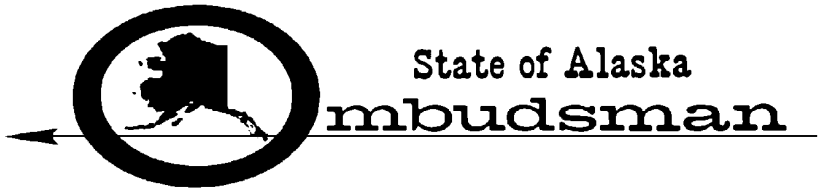

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State of Alaska
Ombudsman

INVESTIGATIVE REPORT

Ombudsman Complaint J2003-0031
Finding of Record and Closure
(Public per AS 24.55.200)
The names of the complainant and her family members have been changed to protect their privacy, and other specific information, which would help to identify the complainant or her family, has been removed.

December 20, 2004

SUMMARY OF THE COMPLAINT

A custodial parent contacted the Ombudsman in March 2003 to complain about the Child Support Enforcement Division, which is now known as the Child Support Services Division (CSSD).[1] The complainant has primary custody of one child, with court-ordered visitation for the child's father. Another state's court entered the original support and custody order in 1993. In 1998, the complainant and child moved to Alaska, the state of residence of the child's father.

The complainant said that after she and the child moved to Alaska, CSSD failed to enforce the terms of the other state's support order, resulting in the complainant being underpaid support for several years. She alleged that she was owed thousands of dollars in arrears that CSSD had not attempted to collect.

In 2001, CSSD requested that the Alaska Superior Court modify the support order, and the court completed the modification in October 2002. As a result of the modification, CSSD made several thousand dollars in adjustments to the complainant's account in December 2002 and January 2003. In addition to her allegation that CSSD failed to pursue pre-modification arrears, the complainant believed that CSSD had misinterpreted

[1] The Child Support Enforcement Division (CSED) changed its title to the Child Support Services Division effective June 30, 2004, while the final investigative report was pending. The agency is referred to as CSSD in this report, except where the report contains direct quotations from material prior to July 2004.

the modification order,[2] resulting in underpayments in 2003. Further, she did not understand the CSSD's explanations of the recent adjustments.

The complainant contacted the Office of the Ombudsman. As part of preliminary review of the case, the ombudsman investigator obtained a payment history of the custodial mother's support case for the previous several months. Although some of the complainant's concerns about the adjustments were unfounded, the investigator was unable to understand portions of the recent payment history, and seconded the custodial mother's request that CSSD conduct a full audit of her CSSD account.

CSSD completed a full (manual) audit of the complainant's account on June 3, 2003. The complainant had anticipated that the audit would confirm that she was owed child support arrearages, but instead, the audit introduced a new issue. CSSD concluded that the complainant had improperly retained child support payments that she should have turned over to the state while she was receiving Alaska Temporary Assistance Program (ATAP) benefits. A recipient of ATAP is required to assign child support payments to the State of Alaska while receiving cash benefits. CSSD auditor Hal White calculated that the complainant had received an "overpayment" of $2560.66, to the detriment of the Alaska Division of Public Assistance. As a result, CSSD immediately suspended child support payments to the complainant and the child from July 2003 to October 2003. They received no child support in July, August, and September, and half of the normal child support payment in October 2003. The non-custodial parent continued to pay support during this period, but CSSD disbursed his payments to the State of Alaska, instead of to the custodial parent (the complainant). The complainant denied having improperly retained any support payments, and disputed the audit results.

The Ombudsman opened a complaint file with the following allegations, stated in terms that conform with AS 24.55.150, which authorizes the ombudsman to investigate complaints about administrative acts of state agencies.

Regarding enforcement of the other state's child support order, the ombudsman reviewed the following allegations:

Allegation 1: CSSD unreasonably refused to fully enforce the terms of another state's child support order, resulting in the complainant being underpaid child support.

Allegation 2: CSSD performed inefficiently by failing to pursue modification of the complainant's child support order for more than two years.

Allegation 3: CSSD failed to provide an adequate explanation of adjustments made to the complainant's account after judicial modification of the support order.

Allegation 4: CSSD made mistakes of fact in the complainant's child support account in 2003, resulting in the complainant being underpaid child support.

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[2] The complainant also had complaints about the court-appointed master's handling of the modification, but judicial decisions are not within the Office of the Ombudsman's jurisdiction as per AS 24.55.110(2) and 21 AAC 20.010(a)(1)

Regarding the CSSD audit of the complainant's child support case, the Ombudsman investigated the following allegations:

Allegation 5: CSSD made mistakes of fact in the audit of the complainant's account.

Allegation 6: CSSD unfairly pursued the complainant, a custodial parent, for overpayments owed to the Division of Public Assistance, even though the Division of Public Assistance had declined to recoup the overpayments for more than four years.

Allegation 7: CSSD unreasonably suspended all of the complainant's child support for three months, and reduced the fourth month's disbursement.

Assistant Ombudsman Beth Leibowitz investigated these allegations. Ms. Leibowitz gave written notice of investigation to then-CSSD Director John Main and Complaint Resolution Manager Lisa Taylor on July 31, 2003, in accordance with AS 24.55.140. In that notice, the Ombudsman requested that CSSD delay suspension of the complainant's child support pending completion of the Ombudsman investigation. CSSD declined to do so.

BACKGROUND

The Support Case Begins

The complainant (the custodial mother[3]), and the father (obligor father)[4] have one child. The complainant and child moved to Wyoming in 1991. The obligor father lived in Alaska. The parents eventually litigated child custody and support in Wyoming district court. In 1993, the parents and their respective attorneys entered a stipulation, which the court accepted in the July 28, 1993, Order on Stipulation. The order granted the complainant "primary" custody of the child, with specified periods of visitation for the obligor father, especially summer vacation visitation. Regarding child support, the July 28, 1993, order provided in relevant part:

> 3. The Plaintiff [father] is hereby ordered to pay child support in the minimum amount of $450.00 per month, beginning on July 1, 1993.
>
> Child support will abate by one-half after such time as the Plaintiff has the child with him for a period of fourteen (14) days or more.
>
> 4. The parties are hereby ordered to report all of their income as defined by Wyoming statutes each and every month, and if such report of income justifies additional payments of child support or an adjustment in the amount of child support pursuant to the Wyoming child support guidelines, the Plaintiff shall pay such additional amounts as are necessary to make up the difference in the following month.

[3] The complainant's name has been changed to protect her privacy and that of the child.
[4] The father's name has been changed to protect privacy.

> 5. The parties are hereby ordered to submit to the Clerk of the District Court of [county name redacted] County, Wyoming, each and every year, all W-2's, 1099's, and any other documents evidencing income to them during the preceding year. The parties are further ordered to submit their tax returns so that the Court may determine net income on an annual basis. If such net income as demonstrated by submissions of the parties requires additional payments of child support, the Plaintiff shall pay such additional amounts of child support as are required in one lump sum by no later than one month from the determination.

The 1993 order also ordered the obligor father to provide medical insurance for the child, with the parents to split deductibles and uncovered expenses; to establish a college education trust fund for the child in the amount of $10,000; and to pay $1500 to satisfy outstanding child support obligations from March 1992 to July 1993. After 1993, the parties were to equally split the child's visitation transportation costs. Before the judge signed the 1993 order, the complainant's attorney stated his understanding of the support provisions in court, and the obligor father's attorney did not dissent from this summary:

> Now then, as regards child support. Future support will be set at a minimum of $450.00 per month beginning 1 July, 1993.
>
> Child support will abate by one-half after such time as [the obligor father] has the child with him for a period of in excess of fourteen days, pursuant to the Wyoming statutes. I believe that says fourteen days or more.
>
> Furthermore, the parties will agree to report all of their income, as defined by Wyoming Statute, each and every month, and if that exceeds, on the guidelines, <u>if the income justifies an additional payment of child support that they will submit, or that [the obligor father] will submit such amounts as are necessary</u>. Furthermore, that if [the custodial mother] has income and that adjustment needs to be made, then that will be taken care in the following month, because obviously [the obligor father] won't have knowledge of it in the month it would be due. <u>It is a sliding scale thing with a base, is what we are trying to establish here, Judge</u>.
>
> Then, as well, the parties have agreed that they will submit to the Court their W-2's, 1099's, anything evidencing income, and as well probably their tax returns to establish net income to the Court on an annual basis. And if that justifies additional payment of child support, that they will pay that.[5] [Emphasis added]

The custodial mother probably believed that the settlement would guarantee ample child support by automatically accounting for variations in the obligor father's income. The order did not work that way.

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[5] The statement is drawn from the transcript of the 1993 hearing in Wyoming District Court.

Wyoming Litigation Continues

The parties were back in trial in February 1995.[6] In May 1995, the court found both parties in contempt of court for failures to comply with the 1993 order. The obligor father had failed to report his income monthly, failed to pay additional child support above the $450 per month minimum, failed to provide proof of medical insurance, and failed to fund the college trust fund specified in the 1993 order. The custodial mother was held in contempt of court for failing to facilitate summer visitation in 1994.

The court ordered the obligor father to pay $1065.30 in child support arrearages, representing support due above the $450 per month minimum. The court then modified the income reporting provisions to eliminate monthly income reports and set an annual reporting requirement, with additional support to be paid annually based on income:

> 7. The monthly income reporting provisions of the Order on Stipulation shall cease. Plaintiff's obligation to pay child support shall be in the minimum sum of $450.00 per month and shall continue to be payable on or before the 1st day of each month. The parties are to report their income for the adjustments to child support only on an annual basis by filing complete copies of their tax returns together with all supporting documentation such as W-2's and 1099's, even if the 1099's are not filed with their returns. . . . Each party shall, within twenty days from the date of the other party's filing, submit to the other party his or her computations of the additional child support. A copy of each parties' calculations shall be filed with the court. Said calculations shall take the net annual income divided by 12 to determine the average monthly income. The averages shall be used to compute the support for one month. Since the minimum shall remain $450.00, if the calculations show less than $450.00, no additional child support shall be due or accrued. However, if the calculations show that more than $450.00 per month should have been paid, then the amount shall be the monthly average times twelve. If there is no dispute, the additional amount, if any, shall be paid on or before May 20 of each year. In the event that there is a dispute, the plaintiff shall pay the amount he claims is appropriate and the clerk of court shall send copies of the documentation to the district judge for final determination. If a hearing or additional information is needed, the court will take appropriate action. If no further hearing or additional information is needed, the court will enter an order based upon the documentation provided by each of the parties.

The parties continued to litigate. In 1997, the Wyoming district court ruled that the obligor father was in contempt of court because he had not timely filed his income tax returns with the court by April 15, 1995, and April 15, 1996, and he also had not sent the income information to the custodial mother. He further had failed to calculate and pay

[6] While the custodial mother disputed the adequacy of support payments, the obligor father sought modification of custody. The court denied his request to modify custody.

additional support amounts owed above the $450 monthly minimum. The court ordered the obligor father to pay the custodial mother $2,406.84 representing arrearages due for 1995 and 1996. In September 1997, the court denied the obligor father's petition for a visitation abatement, on grounds that he was still in contempt of court, as he had not yet shown payment of the $2,406.84.

However, in December 1997, the court entertained a motion for reconsideration. The court reevaluated the obligor father's income, and concluded that he did not owe additional child support for 1995 and 1996 after all. Pursuant to a January 1998 order, the obligor father was relieved of the $2,406.84 debt, although the court again noted his failure to obey the income reporting requirements and threatened sanctions if he did not begin reporting his income.

Complainant Relocates to Alaska

In June 1998, the custodial parent (the custodial mother) and her child moved back to Alaska. At that point, none of the parties to the support case remained in Wyoming – parents and child all resided in Alaska. The custodial mother said that she provided CSSD with all her Wyoming court documentation shortly after arriving in Alaska. CSSD was backlogged at the time, and did not establish a case for her until November 1998.

The custodial mother applied for Alaska Temporary Assistance (ATAP) for herself and the child, and the Division of Public Assistance (DPA) opened a case for them in June 1998. In order to receive public assistance, the custodial mother was required to assign her rights to child support to the State of Alaska. Usually, the obligor is expected to send checks directly to CSSD while the custodial parent receives ATAP. CSSD retains the checks to reimburse DPA for benefits paid. As will be discussed later, payments did not move so smoothly in this case.

The custodial mother received ATAP on and off for the next three years. According to the CSSD audit, she was on ATAP June 23, 1998, through September 30, 1999; December 6, 1999, through March 31, 2000; May 12, 2000, through September 30, 2000; and November 27, 2000, through October 31, 2001. During this period, she received assistance for all but a few months. The custodial mother has not sought ATAP benefits since October 2001.

Complainant Attempts to Litigate Long Distance

The custodial mother continued to file pleadings in Wyoming District Court, but was without an attorney much of the time. The Wyoming court file shows that the custodial mother and the obligor father filed numerous documents with the Wyoming District Court from 1998-2001, but the court made almost no rulings in the case during that period. For example, the court did not rule on the custodial mother's 1999 petition to have the obligor father held in criminal contempt. The court did receive some income information from the obligor father in 1998, 1999, and 2000, but the court failed to issue any ruling on whether he owed child support above the $450 minimum. The court received additional filings in 2001, although it is not clear whether the obligor father

provided comprehensive information on his tax year 2000 income. In 2001, the court ruled that the custodial mother was entitled to access to the obligor father's investment information, but still did not rule that he owed any additional support.

The Wyoming litigation concluded in 2001. The Wyoming District Court found that Alaska had jurisdiction over the case and ordered all proceedings transferred to Alaska.

Alaska CSSD and the Wyoming Support Order

Even after the custodial mother and the child relocated to Alaska in 1998, Wyoming continued to manage the child support case until 2002. The obligor father mailed his personal checks to the Clerk of Wyoming District Court for the county where complainant had lived.[7] The printed Wyoming payment history reflects that the obligor father was fairly consistent in paying $450 per month, except when he received visitation in the summer and paid $225 per month. From June 1998 until November 2000, the *** County Wyoming clerk of court's office simply forwarded the obligor father's personal checks to the complainant or Alaska CSSD. The Wyoming clerk of court's office recorded that the checks had arrived, but did not track whether the checks were endorsed and deposited. The destination in any given month depended on whether the custodial mother was on ATAP at that point and, if so, on whether CSSD had successfully communicated to Wyoming the need to send the support checks to CSSD and not to the custodial mother. The CSSD screen prints reflect several communications from 1998 onward regarding whether support checks were being sent to CSSD while the custodial mother was on ATAP, or to the custodial mother.

The screen prints from CSSD indicate that, beginning in early 1999, the custodial mother complained about the fact that CSSD was only collecting $450 per month and was not attempting to determine if additional support was due pursuant to the Wyoming court orders. On February 26, 1999, CSSD received a fax from the custodial mother requesting an "administrative review" of the case, and stating that the obligor father had more income than he was reporting. In response to her complaints, CSSD staff at various times suggested that the complainant request a modification of the support order, whereupon CSSD would petition an Alaska court to reset the support in accordance with Civil Rule 90.3. CSSD workers documented sending the custodial mother a "Registration of Foreign Order" packet in February 1999, the usual prerequisite to modifying an out-of- state support order. The custodial mother did not return the packet. At the custodial mother's request, CSSD sent her another modification packet in December 1999, which she also did not return.

In January 2000, CSSD personnel discussed whether the state could initiate a modification of the support order, even without having received signed documents from the custodial mother. She was receiving public assistance at that time and her right to child support was therefore assigned to the state. At the time, the CSSD files reflect

[7] In Wyoming, the clerks of court in each county were the primary child support enforcement agencies, although Wyoming instituted a central State Disbursement Unit in 1999. Thus, the clerk of court's office was in charge of this case.

CSSD's conclusion that it could not start the modification unless one of the parents requested it (by completing the standard paperwork).

In late November 2000, a CSSD regional office gave the custodial mother another modification packet. Also in November 2000, the Wyoming State Disbursement Unit (SDU) began processing the obligor father's support payments.[8] Wyoming received the obligor father's support checks and in turn issued warrants, which were then sent to either the custodial mother or to Alaska CSSD. Unlike the Wyoming clerk of court's earlier practice of simply forwarding the obligor father's personal checks, the Wyoming SDU tracked whether the warrants were endorsed.

On June 12, 2001, the CSSD computerized note (screen print) states that CSSD staff decided that the agency could in fact initiate the modification, despite the fact that the custodial mother still had not completed the paperwork required to register and modify the Wyoming order in Alaska.[9] CSSD concluded at this point that it could initiate the registration and modification because the custodial mother was on public assistance and the support debt was assigned to the state. A CSSD representative appeared telephonically in Wyoming court in June 2001. The Wyoming District Court issued its first decisive ruling in the case since 1998: it found that Alaska had jurisdiction and ordered all proceedings transferred to Alaska. CSSD began modification proceedings in June 2001.

In April 2002, CSSD took over all enforcement of the child support case, and the obligor father thereafter sent his checks to Alaska CSSD instead of to Wyoming. The Wyoming State Disbursement Unit, however, as of the date of this final report has an open case for the custodial mother and the obligor father, with arrears of $7198.87 listed as having accumulated since April 2002 because Wyoming has neither received payments nor credited the obligor father for his payments made directly to Alaska CSSD. The Wyoming State Disbursement Unit (SDU) apparently has not received a copy of the Alaska modification order or other notice to close the Wyoming enforcement action. Although the Wyoming District Court has a copy of the Wyoming order transferring the case to Alaska, the Wyoming court lacked documentation of the subsequent modification.

CSSD Obtains Judicial Modification of Wyoming Support Order

CSSD initially asked that the obligor father's support obligation be increased to $1400 per month, based on the obligor father's 2000 tax return. The standing master appointed by the superior court rejected CSSD's argument, but concluded that the obligor father's

[8] The Wyoming State Disbursement Unit was created in late 1999, and counties gradually began shifting the actual disbursements of support to the statewide office. But the District Court Clerk of Court continued to actually sign the checks, even though the central State Disbursement Unit was managing the account. Wyoming has a combination of county-level and statewide child support enforcement, in which the Wyoming District Court's clerk for a county may remain primarily responsible for child support enforcement, despite the existence of a state child support enforcement office.

[9] However, the June 20, 2001 entry in CSSD's computerized notes states that the CSSD worker left a message for the non-custodial parent that "we are ROFO [Registration of Foreign Order] the WY order to mod [modification] per CP request." This is not entirely consistent with the June 12, 2001 entry.

support obligation should be almost doubled, from $450 per month to $813.35 per month. The standing master subsequently filed a correction to the report on October 10, 2002. She noted a typographical error in the cost of employer-provided housing used to determine the obligor father's income. The corrected support amount was $763.35 per month.

The master's report commented on health insurance costs, and also noted the Wyoming orders finding the obligor father in contempt for failing to report his income. The master did not make any findings regarding whether the obligor father owed additional support for the period 1998-2001 pursuant to the "additional payment" provisions of the Wyoming orders.

The superior court judge signed the Order for Modification of Child Support on October 10, 2002. The support order's effective date was July 1, 2001, the first month after CSSD gave notice of the modification proceeding.[10] The order set child support at $763.35 per month, and allowed a health insurance credit of $28.50 per month to the obligor father. His net obligation was $734.85 per month. Paragraph 6 of the order also provided that the health insurance credit would be adjusted automatically if the cost of insurance changed. Apparently, the obligor father provided CSSD with evidence of increased insurance costs, and CSSD increased his health insurance credit to $37.40 per month effective October 2002.[11]

Complainant Dissatisfied After Modification

Because the modification order entered in October 2002 had an effective date of July 1, 2001, the obligor father was placed substantially in arrears at the end of 2002. He had been consistently paying $450 per month, and $225 in months when he received a visitation abatement, but obviously, this only covered part of the new monthly support order of $734.85. In December 2002, CSSD adjusted the custodial mother's and the obligor father's account to reflect the several thousand dollars in arrears accrued pursuant to the modification, from July 1, 2001 (effective date) to December 2002.

In January 2003, the obligor father fell behind on the ongoing January support payment, paying only $353.18. Then, also in January, he paid a lump sum of $4476.45, which covered much of the arrearage. CSSD disbursed the $353.18 to the custodial mother in January, and then disbursed $3043.85 of the lump sum payment to her. The remainder of the lump sum ($1432.60) went to DPA. Then, when the obligor father submitted a payment of $734.85 toward February support, CSSD also disbursed that amount to DPA.

The custodial mother knew that the obligor father had made one large lump sum payment in January 2003, and some monthly payments, but she also knew that the amount he had paid was less than the amount disbursed to her. While she acknowledged that she had

[10] Although CSSD began processing the modification in 2001, CSSD did not file the modification petition in court until January 2002.

[11] By the time the custodial mother received the court's modification order, the health insurance credit of $28.50/month listed in it was already obsolete.

received four months of public assistance[12] during the period covered by the modification adjustments, she thought that CSSD had withheld more money than could be explained by the four months of public assistance debt. In a similar vein, she said that the obligor father had made a payment of $881.36 in April 2003, but she had received only $728.92 that month.

Also, in March 2003, CSSD granted the obligor father a visitation credit of $1412.11 for the summers of 2001 and 2002. The custodial mother disputed the amount of the visitation credit. Further, she alleged that CSSD had reduced the non-custodial parent's monthly support obligation for double his proper health insurance credit, resulting in underpayment. Finally, she argued, as she had before, that the obligor father owed far more than $450 per month in child support for the pre-modification period (prior to July 1, 2001), and that CSSD had erred in not seeking to collect her claimed arrearage either administratively or in court.

CSSD Audits Account

As requested by the custodial mother and the ombudsman investigator, CSSD conducted a full audit of the account. Instead of turning up arrears owed to the complainant, as the complainant hoped, CSSD discovered several periods where the agency believed the complainant had received ATAP benefits and simultaneously retained child support payments. CSSD concluded that the custodial mother had been overpaid $2560.66 as of June 3, 2003. This did not reflect an overpayment by the obligor, the obligor father. Instead it reflected money allegedly owed to DPA by the custodial mother. The most recent of these amounts dated from August 2001. When CSSD completed the audit in June 2003, agency staff decided to recover the overpayment immediately. The agency suspended all child support disbursements to the custodial mother for July, August, and September, with a disbursement of $343.14 in October (less than half of the normal monthly amount). This suspension did not relieve the obligor father of his obligation to pay ongoing support; the difference is that his payments were disbursed to the State of Alaska, not to the custodial parent, the custodial mother. The custodial mother denied having illegitimately retained child support money while receiving ATAP, and thus disputed the overpayment calculation. In a letter to the custodial mother dated June 25, 2003, Lisa Taylor of CSSD informed her that CSSD does not provide any administrative hearing or appeal from the audit and CSSD's resulting suspension of support disbursements. Lisa Taylor wrote: "Your only recourse if you still disagree with our audit after we've addressed your written concerns, is to take the matter back to court."

INVESTIGATION

The ombudsman investigator reviewed relevant statutes and regulations, agency policies and procedures, and interviewed the following:

1) Lisa Taylor, Complaint Resolution Manager, Alaska CSSD;

[12] The custodial mother and the child received ATAP benefits July, August, September, and October of 2001.

2) Nessie Shores, Child Support Specialist III, Alaska CSSD;
3) Charles McCormick, Child Support Specialist III, Alaska CSSD;
4) Russell Crisp, Complaint Resolution, Alaska CSSD;
5) Pam Hartnell, Assistant Attorney General, Alaska Department of Law;
6) Kathy Ensor, Public Assistance Analyst II, Alaska DPA;
7) Monica Windom, Eligibility Technician III, Alaska DPA;
8) Trish Cole, Claims Unit, Eligibility Technician II, Alaska DPA;
9) Stacey Depriest, Public Assistance Eligibility Technician II, Alaska DPA;
10) Joan Chase, Food Stamp policy specialist, Alaska DPA;
11) Pat Foglia, Hearing Officer, Alaska Department of Health and Social Services;
12) PL[13], Child Support Clerk, Wyoming District Court;
13) JB, Child Support Clerk, Wyoming District Court,;
14) Tee McNamar, Wyoming State Disbursement Unit [state child support office];
15) Jan Jensen, Child Support Specialist, United State Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, Region 10;
16) The custodial mother, complainant/custodial parent.

The report from this point will be divided into the two major elements of the complaint: 1) CSSD's alleged failure to properly enforce the Wyoming order (Allegations 1-4) and 2) the results of the CSSD audit and CSSD's suspension of child support disbursements to the complainant (Allegations 5-7). The report will first address the enforcement of the Wyoming support order. The results of the CSSD audit and CSSD's subsequent suspension of child support disbursements to the custodial parent are discussed in the second part of this report, starting on Page 36.

ENFORCEMENT OF WYOMING SUPPORT ORDER

CSSD Enforces Only Part of the Wyoming Support Order

When the custodial mother arrived in Alaska in June 1998, she brought with her the Wyoming support order, which provided for $450 per month support as a sum certain, plus an annual "balloon payment" to be computed based on the parties' actual income. The annual additional payment, if any, was to be calculated after the parties' submission of income tax returns to the clerk of court each spring, with the Wyoming District Court for *** County to settle any disputes as to the amount.

The district court clerk in Wyoming administered court-ordered child support.[14] Therefore, the obligor father sent his support payments to the clerk's office for the *** County branch of Wyoming District Court.

[13] The names of the Wyoming Child Support Clerks were removed to preserve the complainant's privacy by obscuring the county of origin in Wyoming.
[14] The clerk of district court remains the record keeper for court-ordered child support. However, in 1999, Wyoming phased in the State Disbursement Unit to receive and disburse payments, so some parents now send payments to the state office instead of the county court.

According to the child support clerk in the Wyoming District Court for several years,[15] the clerk's office did not enforce the "additional payment" provision unless it received a court order stating the amount of additional support to be paid. Absent a court order specifying additional support, the clerk's office considered the $450 per month to be full payment of support. She said that the balloon payment provision was problematic and not readily enforceable. She considered such provisions as an invitation to the court to enter further support orders, not as a direction to the clerk of court to recalculate the support amount administratively.[16] Beginning in 1999, the Wyoming clerk of court provided CSSD with payment histories. The clerk of court's payment histories did not reflect significant arrearages, because the obligor father mostly kept up with the "minimum" sum certain of $450 (and $225 when he received a visitation abatement), and the Wyoming court did not order any additional support payments from 1998 through 2002.

CSSD took an even simpler view of the Wyoming court orders: CSSD concluded that the monthly support amount was $450 per month, and no more. Lisa Taylor of CSSD indicated that provisions for recalculating support beyond the "sum certain" listed in the order were considered unenforceable and were deliberately ignored by CSSD. She said that CSSD had no mechanism for implementing the "balloon payment" provision of the Wyoming court order. CSSD supervisor Nessie Shores provided a similar explanation. This policy is consistent with CSSD file notes in this case, dating back to 1999.

Complainant Told to Apply for Modification of the Order, But Fails to Do So

Beginning in March 1999, the custodial mother complained to CSSD that it was not adequately enforcing the Wyoming support order because CSSD was collecting only the $450 "minimum." The CSSD worker responded that if the custodial mother was unsatisfied with the support amount, she should request a modification of the order. CSSD had already sent the custodial mother a Registration of Foreign Order (ROFO) packet, a prerequisite to the modification request.[17] This pattern repeated several times over the next two years. CSSD maintained that it was enforcing the Wyoming order, and provided the custodial mother with paperwork packets with which to request registration and modification of the Wyoming order by an Alaska court, as a remedy for her dissatisfaction with CSSD's enforcement.

At one point, the custodial mother claimed that a CSSD worker, Mr. Ford, told her not to file for a modification. At another point, she said that her attorney told her not to request a modification. Mr. Ford is no longer with CSSD, and it is not clear exactly what happened, except for the fact that the custodial mother did not return paperwork to

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[15] The child support clerk is still with the District Clerk of Court's office, but is now a deputy clerk of court.

[16] When the Wyoming District Court ordered specific additional support payments in 1993 and 1995, the clerk of court's payment history reflected billing and receipt of those amounts. In 1993, the obligor father was ordered to pay $1500 in additional support, and this amount and its receipt is noted in the payment history. The 1995 court order provided that the obligor father owed $1065 in additional support, and this amount also appears in the Wyoming payment history. No other additional support amounts appear.

[17] In the meantime, CSSD received a payment history from Wyoming, indicating that the obligor father was current in his payments.

register and request modification of the Wyoming order. This stalemate continued for two-and-a-half years, not counting the custodial mother's first six months on Alaska ATAP before CSSD established a case for her.

Could CSSD Initiate the Modification Without the Complainant's Written Request?

During the period 1998-2001, the custodial mother received public assistance benefits most of the time, and thus her rights to child support were assigned to the state. In January 2000, CSSD worker Marilyn Keith proposed that CSSD initiate the modification itself, while the custodial mother was receiving public assistance. However, another CSSD employee[18] noted in the file that they "could not" modify without a request from one of the parents, and the modification idea was dropped. Then, in June 2001, CSSD apparently reversed its position; it "state-initiated" a registration and modification of the Wyoming order, concluding that it could do so because the custodial mother was on public assistance.[19]

According to Charles McCormick, CSSD support specialist III, the latter decision was the correct one. He explained that CSSD did have discretion to initiate a modification when the custodial mother was receiving ATAP and her support rights were assigned to the state. This was just as true in January 2000 as in June 2001. Mr. McCormick's explanation matches CSSD's regulation on initiating review of support orders, 15 AAC 125.316:

> (a) The agency will initiate a review of the support provisions of a support order if
>
> (1) the support order was entered by or registered in a tribunal of this state;
>
> (2) the support order is being enforced by the agency; and
>
> (3) a parent who is subject to the support order or a child support enforcement agency of another state asks the agency to review the support order.
>
> (b) *The agency, at its own discretion* or at the request of a child support enforcement agency of another state, will, in its discretion, initiate a review of the support provisions of a support order if
>
> (1) *the support order was entered by or registered in a tribunal of this state;*
>
> (2) the support order is being enforced by the agency; and
>
> (*3) at least one of the following conditions is met:*

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[18] The screen prints give the PCN of the employee who entered the notes, but the ombudsman investigator was unable to identify the employee who made this entry.

[19] This information is drawn from Lisa Taylor's and Nessie Shore's reviews of the case, and from the CSSD screen print dated June 12, 2001. In contrast, a screen print dated June 20, 2001, states that the CSSD worker called the non-custodial parent and let him know that CSSD was registering the Wyoming order per the custodial parent's request. The ombudsman investigator concluded that, despite the June 20, 2001, screen print, the evidence indicates that CSSD used its discretion to initiate the registration and modification without the custodial mother's formal request. The custodial mother's repeated letters and phone calls to CSSD indicate that she wanted CSSD to take some kind of action to obtain more child support, but it does not appear that she filled out the paperwork "packet" for registration of the Wyoming order or submitted a written request for modification using CSSD's forms.

> (A) the support has been assigned to a state;
> (B) a medical support order is not in effect as provided in AS 25.27.063 and 15 AAC 125.085; or
> (C) other circumstances exist that may justify a modification of the support obligation. [Emphasis added].

Mr. McCormick also explained that in 2000, CSSD had a substantial backlog of modifications. This case was not as high a priority for a discretionary review as (1) a case where no support dollars were flowing at all, because the entire support order was unenforceable as written; or (2) a case where the obligee was not receiving public assistance and therefore directly dependent on the support payments. By 2001, CSSD had reduced the backlog, and had personnel available to take a closer look at the custodial mother's support order. Mr. McCormick also said that if the custodial mother had actually filled out the paperwork to request a modification (including information necessary to register the Wyoming order), then the modification review would no longer have been discretionary, and CSSD would have proceeded with the review.

Standards Set by Uniform Interstate Family Support Act

The Uniform Interstate Family Support Act (UIFSA), which has been adopted by Alaska[20] as AS 25.25.101 – 25.25.903, provides for enforcement and modification of other states' child support orders. To understand what CSSD could and could not do with the Wyoming court order, a summary of applicable UIFSA provisions is necessary.

Enforcement and Modification of Support Orders

The basic rule of UIFSA is that both the Alaska superior court and CSSD are required to enforce the terms of the other state's order (the "controlling order") unless Alaska obtains jurisdiction to modify the order and then does so. As long as the original state's support order remains unmodified, an Alaska court or CSSD must follow the other state's order. Alaska must apply the issuing state's law to interpret the order. AS 25.25.604(a) provides: "The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearage under the order."[21] However, while the issuing state's law governs the interpretation of support amounts, UIFSA provides for use of local procedure to enforce the order. As stated in AS 25.25.603(b): "A registered order is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state."

Jurisdiction to modify other states' orders is limited to certain circumstances; in general, as long as the obligor, obligee, or child remains in the original issuing state, only that

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[20] Federal law has required the states to adopt UIFSA in order to receive federal funds for child support enforcement. See 42 U.S.C. § 666. Furthermore, the federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B, makes many provisions of UIFSA federal law.

[21] See also State, Dep't of Revenue, CSED ex rel. Walklace v. Delaney, 962 P.2d 187 (Alaska 1998) (Alaska law governed rate of interest on arrearage accrued pursuant to Alaska support order, and therefore the Washington child support agency could not waive interest on arrears owed by the obligor, a Washington resident).

state can modify its order.[22] But here, Alaska clearly had jurisdiction to both enforce and modify the support order, because parents and child had all moved to Alaska. AS 25.25.613 applied to this case:

> (a) If all of the individual parties reside in this state [Alaska] and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.
>
> (b) A tribunal of this state exercising jurisdiction as provided in this section shall apply the provisions of AS 25.25.101 – 25.25.209 and 25.25.601- 25.25.614 to the enforcement or modification proceedings. AS 25.25.301 – 25.25.507, 25.25.701, 25.25.801 and 25.25.802 do not apply, and the tribunal shall apply the procedural and substantive law of this state.

Wyoming lost its exclusive jurisdiction to modify the support order in 1998 after the custodial mother and the child moved to Alaska, where the obligor father already lived. However, until modified, the Wyoming order remained the "controlling order" to be enforced in Alaska or anywhere else.

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[22]See AS 25.25.205. The National Conference of Commissioners on Uniform State Laws provides the following official commentary on UIFSA section 205:

> This section is perhaps the most crucial provision in UIFSA. Drawing on the precedent of the federal Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, the issuing tribunal retains continuing, exclusive jurisdiction over a child support order, except in very narrowly defined circumstances. As long as one of the individual parties or the child continues to reside in the issuing State, and as long as the parties do not agree to the contrary, the issuing tribunal has continuing, exclusive jurisdiction over its order - which in practical terms means that it may modify its order. The statute attempts to be even-handed - the identity of the remaining party - obligor or obligee - does not matter. If the individual parties have left the issuing State but the child remains behind, continuing, exclusive jurisdiction remains with the issuing State.
>
> The other side of the coin follows logically. Just as subsection (a)(1) defines the retention of continuing, exclusive jurisdiction, by clear implication the subsection also defines how jurisdiction to modify may be lost. That is, if all the relevant persons - the obligor, the individual obligee, and the child - have permanently left the issuing State, the issuing State no longer has an appropriate nexus with the parties or child to justify exercise of jurisdiction to modify. Further, the issuing tribunal has no current information about the factual circumstances of anyone involved, and the taxpayers of that State have no reason to expend public funds on the process. Note, however, that the original order of the issuing tribunal remains valid and enforceable. That order is in effect not only in the issuing State and those States in which the order has been registered, but also may be registered and enforced in additional States even after the issuing State has lost its power to modify its order, see Sections 601-604 (Registration and Enforcement of Support Order), *infra*. The original order remains in effect until it is properly modified in accordance with the narrow terms of Sections 609-612 (Registration and Modification of Child Support Order).

See 1996 Edition of UIFSA as published by the National Conference of Commissioners on Uniform State Laws.

Because the Wyoming order was judicial, not administrative, CSSD regulations required judicial modification. See 15 AAC 125.705, 125.326. Alaska law, i.e. Civil Rule 90.3, controlled the terms of the modification. Once the modification was in effect, the Wyoming order was superseded, except that it can still be enforced to collect arrears that accrued pre-modification. See AS 25.25.205(c), AS 25.25.612.

The Mechanics of UIFSA: Registration of Support Orders

UIFSA contemplates that both enforcement and modification will begin with registration. "Registration" refers to the standardized process for receiving information on another state's order, so that CSSD (or the court) can enforce it. For ease of enforcement, AS 25.25.507 (UIFSA § 507) also provides for summary administrative enforcement without full registration, unless the obligor objects, assuming that CSSD has received enough practical information to act on the support order.[23] However, formal registration is necessary for modification. Either a parent or an out-of-state child support agency can register a support order by providing the necessary information. AS 25.25.602 lists the information needed for registration, including a copy of the support order, a record of outstanding arrears, and "a letter of transmittal requesting registration and enforcement." AS 25.25.602(a) states:

> (a) A support order or income withholding order of another state may be registered in this state by sending the following documents and information to a tribunal of this state:
> (1) a letter of transmittal to the tribunal requesting registration and enforcement;
> (2) two copies, including one certified copy, of all orders to be registered, including any modification of an order;
> (3) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
> (4) the name of the obligor and, if known,
> (A) the obligor's address and social security number;
> (B) the name and address of the obligor's employer and any other source of income of the obligor; and
> (C) a description and the location of property in this state of the obligor not exempt from execution; and
> (5) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

AS 25.25.609 provides that registration for modification has the same requirements as registration for enforcement. (Registration for modification is, however, futile unless Alaska has jurisdiction to modify the order).

CSSD's regulation, 15 AAC 125.700, provides that when CSSD receives a request to enforce an out-of-state support order, CSSD will check to see if the information requirements of AS 25.25.602 have been met, and will also pursue any routine administrative enforcement measures it can take without registering the order, as

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[23] See AS 25.25.507 (summary enforcement upon receipt of information about support order; full registration required if obligor contests enforcement). However, AS 25.25.507 does not apply in cases where the Alaska exercises jurisdiction under AS 25.25.613. See AS 25.25.613(b).

provided in AS 25.25.507. The regulation addresses incomplete information: "If the documentation received by the agency under (a) of this section does not conform to the requirements of AS 25.25.602(a), the agency will remedy any defect that it can without the assistance of the requestor. If the agency is unable to remedy a defect, the agency will immediately notify the requestor of the necessary additions or corrections required to enforce the order or orders."

UIFSA and the Complainant's Support Order

In 1999 (and thereafter) CSSD asked the custodial mother to submit a registration of foreign order (ROFO) packet if she wanted CSSD to register and modify the Wyoming support order. The packet would have provided the information required for registration pursuant to AS 25.25.602. CSSD already had some of this required information: the most recent Wyoming support order, a statement of arrears sent directly from Wyoming, i.e. the payment history; information on the obligor and obligee. Based on the CSSD screen prints, it is not clear whether CSSD received all of the relevant Wyoming support orders (1993, 1995, and 1998) immediately, but CSSD did eventually obtain the orders. The one item that CSSD was clearly missing was a "letter of transmittal" from the custodial mother or a Wyoming child support agency; however, the custodial mother had provided CSSD with voluminous correspondence asking CSSD to do <u>something</u> about her child support, including a faxed letter in February 1999 requesting administrative review.

Under UIFSA, CSSD clearly had jurisdiction to ask an Alaska court to modify the Wyoming support order. In fact, because all of the parties had left Wyoming, Wyoming could <u>not</u> modify the order. If the order did not provide for adequate support, then modification in Alaska was clearly the solution. When CSSD ultimately decided to act and modify the Wyoming order, the registration requirements presented no barrier, despite the custodial mother's failure to submit a registration packet and formal modification request.

<u>Complainant Unsatisfied by Scope of Modification Proceedings</u>

The custodial mother expected the modification proceeding to address the obligor father's arrearages accrued from 1998-2001, and hoped CSSD would litigate this issue. A CSSD screen print dated July 18, 2001, indicates that a CSSD worker explained to the custodial mother that she should address the arrears issue in court, and that a judge could decide whether the obligor father owed more arrears under the Wyoming order.

CSSD did not ask the superior court to rule on whether the obligor father owed additional support payments from 1998-2001, pursuant to the Wyoming order. The payment history CSSD received from the Wyoming child support agency did not reflect substantial arrearage – in fact, it apparently counted the obligor father as current in his payments under the Wyoming order. CSSD relied on the Wyoming payment history. The custodial mother was a party to the judicial modification proceeding, and thus theoretically had the ability to present evidence that CSSD was mistaken, but she did not have the benefit of an attorney to assist her in presenting her point of view. She continued to maintain that

the obligor father owed arrears, because CSSD and the court[24] had not considered the part of the Wyoming order providing for additional payments above $450 per month. When the court entered the modification order in October 2002, with an effective date of July 1, 2001, the modification order did not speak to whether the obligor father owed pre-modification arrears.

ANALYSIS AND FINDINGS – ENFORCEMENT OF ORDER

AS 24.55.150 provides that the ombudsman may investigate administrative acts that the ombudsman has reason to believe might be contrary to law, unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, unnecessarily discriminatory, based on mistake of fact, based on improper or irrelevant grounds, unsupported by an adequate statement of reasons, performed in an inefficient or discourteous manner, or otherwise erroneous.

Allegation 1: CSSD unreasonably refused to fully enforce the terms of another state's child support order, resulting in the complainant being underpaid child support.

The ombudsman finds this allegation ***unsupported.***

According to the Office of the Ombudsman Policies and Procedures manual at 4040, an administrative act is "unreasonable" if:

> (A) a procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program,
>
> (B) a procedure defeats the complainant's valid application for a right or program benefit, or
>
> (C) an action is inconsistent with agency policy and thereby places the complainant at a disadvantage to all others.

In 1998, the custodial mother and the Alaska Division of Public Assistance both asked CSSD to enforce the Wyoming support order. The order was not formally registered for enforcement pursuant to AS 25.25.602, but CSSD established a case. CSSD maintained that it could enforce only the portion of the order setting a sum certain of $450 per month. CSSD ignored the fact that the 1993 and 1995 Wyoming orders made it quite clear that $450 per month was only a floor, and that the obligor was liable for additional support depending on his income each year. Under UIFSA, CSSD was obliged to calculate ongoing support and arrears according to Wyoming law as long as the Wyoming support order[25] remained unmodified, and the Wyoming Supreme Court has upheld this kind of automatic adjustment or additional payment clause in child support agreements.[26] CSSD

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[24] Again, the custodial mother's disputes regarding the court decision are not jurisdictional for the ombudsman.

[25] For convenience this report refers to the 1993 and 1995 Wyoming court orders as the "Wyoming support order" as the original 1993 order and the 1995 modification together represented the controlling support obligation.

[26] See Madison v. Madison, 859 P.2d 1276 (Wyo. 1993); Bailey v. Bailey, 954 P.2d 962 (Wyo. 1998). In Madison, the Wyoming Supreme Court upheld the validity of a court-ordered support obligation very

is not excused by the fact that such an indefinite sort of support order probably would not be considered enforceable under Alaska law, if issued in Alaska.

At first glance, it appears that CSSD refused to carry out its mandate to obtain child support in accordance with the controlling support order. However, the commentary to UIFSA lifts some of the responsibility from CSSD. The commentary on section 604, the section requiring use of the issuing state's law to calculate support due,[27] further states:

> The basic principle of the Act is that throughout the process the controlling order remains the order of the issuing State, and that responding States only assist in the enforcement of that order. Absent a loss of continuing, exclusive jurisdiction and a subsequent modification of the order, the order never becomes an "order of the responding State." *Ultimate responsibility for enforcement and final resolution of the obligor's compliance with all aspects of the support order belongs to the issuing State. Thus, calculation of whether the obligor has fully complied with the payment of current support, arrears, and interest on arrears, is the duty of the issuing State.* [Emphasis added][28]

CSSD repeatedly obtained payment histories from the Wyoming child support agency. These payment histories continued to list the obligor father as current in his payments. If the issuing state, Wyoming, did not calculate additional arrears due in this case, CSSD could rely on that calculation to some degree.

In fact, the Wyoming District Court had opportunities to enforce the "additional support" or "escalation" clause by ordering lump sum payments, as the court did in 1995. According to the table of contents for the court file, in 1998 the obligor father filed information regarding his 1997 income (although he did not submit his tax return as required by the Wyoming court order); in 1999, he submitted his 1998 tax return; in 2000, he again filed a letter describing his income for the previous year. The parties then filed numerous motions and briefs disputing the obligor father's income, especially his investments. It appears that the obligor father also filed some statement of income in 2001 (for tax year 2000). In short, the Wyoming court had income information to rule on. But the Wyoming District Court made no order for additional support payments.[29]

CSSD's essentially passive role in enforcement is disturbing because CSSD left it to the custodial mother to enforce the "additional payment" clause in her support order via

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similar to the White order. The support order discussed in Madison set "minimum monthly support" at $1,270 per month and ordered that the obligor submit his tax return and calculate additional support due each year. The Wyoming court referred to the provision as an "automatic adjustment" or "escalation" clause, and noted that states vary in their willingness to enforce such support agreements. See Jay M. Zitter, Annotation, "Validity and Enforceability of Escalation Clause in Divorce Decree Relating to Alimony or Child Support," 19 A.L.R.4th 830 (1983).

[27] AS 25.25.604.

[28] Uniform Interstate Family Support Act (1996), commentary to § 604.

[29] The ombudsman investigator was unable to determine if the court's silence resulted from judicial inefficiency or because the court considered the evidence and decided that the obligor father did not have sufficient income to owe support beyond $450 per month.

long-distance litigation, even while the custodial mother asked CSSD for help and became eligible for public assistance. CSSD's program is aimed at enforcing support obligations, even if the custodial parent lacks the resources to engage in extensive enforcement litigation. Leaving full enforcement of the Wyoming order – which included the "additional payments" clause – to the custodial mother was not in keeping with CSSD's mission. Instead of merely requesting a payment history, CSSD could have actually asked Wyoming – either the administrative agency or the court – to determine whether the obligor father's $450 per month support was commensurate with his income by Wyoming standards. CSSD's activity might have been more effective than the custodial mother's efforts to litigate the support issue on her own in the Wyoming court.

That said, CSSD's resources are limited, and pursuing Wyoming litigation to fully enforce or clarify the Wyoming support order would have been a disproportionate drain on CSSD's resources. CSSD did in fact ask the issuing state, Wyoming, to tell CSSD how much support was due, and Wyoming repeatedly indicated to CSSD that the obligor father had paid the required support. The case was still active in the Wyoming court, and Wyoming was not enforcing the support order any differently than CSSD's inclinations. While, ideally, CSSD would have been more proactive, UIFSA does not necessarily require the responding state to do more than CSSD did in this case. Thus, the allegation that CSSD acted unreasonably by not collecting additional support is, overall, found ***unsupported.***

Allegation 2: CSSD performed inefficiently by failing to pursue modification of the complainant's child support order for more than two years.

The ombudsman finds this allegation ***partially justified.*** This type of finding is used when the agency's behavior justified the allegation, but the complainant also contributed substantially to the problem.

The Office of the Ombudsman's Policies and Procedures Manual at 4040(14) defines *performed inefficiently*:

> Performed inefficiently generally covers instances of unreasonable agency delay and ineffectual performance.
>
> > (A) The timeliness of an administrative act is sometimes an issue. Use this determination in those situations in which the complaint suggests that the administrative action exceeded:
> >
> > (a) a limit established by law (statute, regulation, or similar enacted source) or
> >
> > (b) a limit or balance established by custom, good judgment, sound administrative practice, or decent regard for the rights or interests of the person complaining or of the general public.

> (B) An agency performs ineffectually when it mishandles the decision-making process or the process of implementing an act or service. The agency might:
>
> * * *
>
> (c) require an unreasonable amount of clarification from the complainant when it could have made a decision or implemented an action or service without such clarification.

As discussed above, CSSD believed itself unable to enforce the Wyoming order as written, and CSSD was thus left with the "minimum" amount specified in the Wyoming order, $450 per month. There was no reason to believe this amount was accurately linked to the obligor father's actual income, because it had been set as a "floor" subject to annual adjustment. This support order was almost certainly insufficient by the standards of Alaska Civil Rule 90.3. In other words, CSSD had a support order whose terms it was not equipped to enforce and CSSD was collecting an amount that was almost certainly not adequate support by Alaska standards.[30]

CSSD had the power to rectify the problem. Once both parents and the child all moved to Alaska, Alaska became the state with the ability to modify the order. See AS 25.25.613.[31] (If one of the parties, or the child, had remained in Wyoming, then Alaska could not have fixed the order, no matter how unsatisfactory it was, but in this particular case, Alaska had jurisdiction.) In addition to jurisdiction under UIFSA, CSSD had the discretion to modify the inadequate support order even without the custodial parent's request. This case satisfied two of the grounds for discretionary review and modification listed in 15 AAC 125.316: the custodial parent was on public assistance, and the order's "unenforceability" provided "other circumstances that may justify a modification of the support obligation."

According to CSSD, the agency asked the custodial mother to provide the information necessary for registration and modification by filling out a ROFO (registration of foreign order packet) and a request for modification. However, CSSD's own regulations provide that the agency may attempt to remedy deficiencies in the registration information provided by the parent. See 15 AAC 125.700. CSSD then had the discretion to begin the modification without the custodial mother's request, because she has assigned her support to the state while she received ATAP.

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[30]The inadequacy of the support amount seems supported by what happened when CSSD did seek modification of the order. Based on the obligor father's income for 2000, CSSD initially calculated that the obligor father should be paying $1400 per month, not $450. The figure the court settled on, $763.35 per month, was still a 69 percent increase over the $450 previously collected. CSSD considers modification warranted if the evidence indicates a 15 percent change.

[31] Under UIFSA, Wyoming could no longer modify the support order, because it had lost its "nexus" to the parties. However, until actual modification by Alaska, the Wyoming order remained enforceable in both Alaska and Wyoming, and Wyoming law governed the support amount and arrears. For a similar case addressing these issues, see Kelly v. Otte, 474 S.E.2d 131 (N.C. Ct. App. 1996).

The custodial mother did not comply with CSSD's paperwork, but her letters and phone contacts with CSSD make it clear that from 1999 onward she wanted CSSD to do something to increase the support she was receiving. CSSD chose to ignore the substance of her request and spent two-and-a-half years waiting for her to fill out paperwork, even though the agency had the means and discretion to remedy the problems with the support order. The problem was exacerbated when CSSD personnel mistakenly concluded in January 2000 that the agency could not register and modify the support order without the custodial mother turning in the proper forms. In 2001, CSSD finally concluded that the custodial mother's failure to file the registration paperwork was no barrier to beginning the modification.

However, Charles McCormick indicated that modifying the custodial mother's order would not have been a priority for CSSD in 2000, even without the mistaken conclusion that CSSD could not act. At the time, CSSD's modification process was extremely backlogged. Higher priority went to (1) requests from parties (nondiscretionary review); (2) cases where CSSD considered the entire support order unenforceable and was therefore collecting no money at all; and (3) cases where the custodial parent was not on public assistance and was therefore directly dependent on the support income. This triage was not unreasonable. However, it does not excuse CSSD from an allegation of inefficiency. The rationale that the custodial mother's case was a lower priority because she was on public assistance is particularly ironic. Prompt modification of the support order – increasing the support CSSD collected – might have enabled the custodial mother to exit the public assistance program much sooner than 2001, to both her relief and that of the State of Alaska.

This allegation is found only "partially justified" because the custodial mother contributed substantially to her own difficulties. She literally had in her hands the forms to request a modification, a request which CSSD would have been required to review once it was made. She first obtained the paperwork from CSSD in early 1999. CSSD advised her to request a modification in order to address her dissatisfaction with the ongoing support amount. She ignored the advice. The ombudsman's criticism of CSSD stems from the fact that CSSD had the power to address the spirit of the complainant's requests for help, and instead CSSD used the complainant's unwillingness or inability to navigate CSSD's system as sufficient reason for inaction.

The ombudsman investigator understands that CSSD has since reduced the backlog in the modification process; therefore this finding does not address CSSD's current status. CSSD has made impressive changes rectifying the delays that existed in 1998-2001. However, this does not eliminate CSSD's inefficiency in this particular case. The ombudsman therefore finds this allegation ***partially justified***.

Allegation 3: CSSD failed to provide an adequate explanation of adjustments made to the complainant's account after judicial modification of the support order.

The ombudsman finds this allegation ***justified.***

The Office of the Ombudsman's Policies and Procedures Manual at 4040(13) defines *unsupported by an adequate statement of reasons*:

> (A) the complainant's concerns are not addressed or explained in the decision directly and completely;
>
> (B) the decision of the agency does not plainly state the rule of law on which it is based;
>
> (C) there is insufficient support for the factual assertions and legal conclusions;
>
> (D) the reasons provided are not comprehensible;
>
> (E) documentation appropriate to the decision has not been included.

After CSSD adjusted the custodial mother's account in December 2002, she said she was unable to understand why CSSD disbursed less money to her than was actually received from the obligor father, the non-custodial parent. The ombudsman investigator was able to determine that some of the money was owed to DPA for public assistance, but the investigator was unable to fully understand how CSSD had divided the disbursements between DPA and the custodial mother. In other words, even with the assistance of Lisa Taylor of CSSD, the ombudsman investigator found it impossible to explain the CSSD disbursements.

In December 2002, CSSD adjusted the account to add in the arrears accrued due to the modification order. The court had issued its decision in October 2002, but the effective date was July 1, 2001, so the "new" arrearage was substantial. The CSSD accounting history showed that as of January 1, 2003, the obligor father owed $5,645.68. This roughly reflected the difference between the $450/month payments he had been making and 17 months of the modified support obligation, set at $734.85/month, plus the full $734.85 for December, because the obligor father had not paid that month's ongoing support.

Shortly after the custodial mother contacted the ombudsman, Lisa Taylor of CSSD provided the ombudsman investigator with a partial accounting history[32] for the custodial mother's CSSD case, from April 2002 to April 2003 (prior to the manual audit). The record indicated that the CSSD account balance was zero as of November 29, 2002, before CSSD began the modification adjustments. Based on this accounting/payment record, it appeared that the only debts at issue were those associated with the Alaska modification order effective July 1, 2001, plus ongoing support payments accruing in 2003.[33]

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[32] This history of payments and disbursements covering April 2002 to April 2003 was an excerpt of the complete accounting history later provided to the ombudsman.

[33] Based on the accounting information provided, especially the zero balance in November 2002, there was no way to detect the overpayment (debt owed by the custodial mother to DPA) later calculated by CSSD during the manual audit.

The obligor father fell further behind on his ongoing support payments by paying only $353.18 at the beginning of January 2003. The account balance increased to $6,027.35. CSSD disbursed the $353.18 to the custodial mother. Then, at the end of January, the obligor father paid a lump sum of $4476.45, which covered much of the arrearage but did not bring his balance to zero. Out of the lump sum payment, CSSD disbursed $3,043.85 of the lump sum payment to the custodial mother and $1,432.60 to DPA. Then, on January 30, when the obligor father submitted a payment of $734.85 toward February support, CSSD also disbursed that amount to DPA. At this point, CSSD had disbursed $2167.45 to DPA.

Some of the modification-based arrears were indeed due to the State of Alaska for public assistance, because the custodial mother had received four months of assistance – July 2001 through October 2001 – during the period affected by the modification. During those four months, the custodial mother received $2,539 in ATAP benefits. Pursuant to AS 25.27.120, the state should be reimbursed the lesser of four months of support payments, or the total ATAP benefits paid ($2,539). Because the account balance as of November 2002 was zero, it appeared that the obligor father had paid his support due under the previous (Wyoming) order, $450/month minus visitation credits, and that four months of his payments had been appropriately disbursed to DPA. The subsequent CSSD audit called the disbursements into question, but the 2002-2003 account history did not provide any indication that payments assigned to the state might not have been disbursed to the state when paid in by the obligor father.

Out of the arrearage accrued as of January 1, 2003, totaling $5,645.68, the ombudsman investigator, Ms. Leibowitz, concluded that less than $1100 was owed to DPA. The text box on the following page details the problem:

Public Assistance Arrears and the Modification Adjustments

Under the 2002 Alaska support order, the obligor father owed $2939.40 (4 x $734.85) for July through October 2001, without counting any visitation credits. However, in March 2003, CSED granted a visitation credit for part of the summer of 2001. The credit reduced the support due from July 1, 2001 through August 15, 2001, lowering the amount owed for this period to $2394.23. (This was less than the $2,539.00 paid in ATAP benefits from July 2001 to October 2001, and the lesser amount determines the public assistance arrearage).

The zero account balance in November 2002 implied that the obligor father had already paid the amounts due under the old Wyoming order for July through October 2001. Thus DPA appeared to have already received some of the money owed for public assistance. Looking at the numbers very crudely, the investigator estimated that the outstanding public assistance debt after July 2001 would be:

A payment history received from Wyoming indicated that the obligor father paid only $225/month in July and August of 2001, apparently anticipating a visitation credit; his payments for July through October of 2001 were thus only $1,350.

Out of the period affected by the modification, the ombudsman investigator estimated the outstanding public assistance debt as follows:

> *(Support owed for months on ATAP) – (amounts already paid by NCP under old order) = Outstanding public assistance debt.*
>
> $2,394.23 - $1,350.00 = $1,044.23.

Again, this estimate was based on information provided by CSED prior to June 2003, and that information indicated that the account had a zero balance in November 2002, so that the only arrears involved would be those related to the modification adjustments.

No matter how the ombudsman investigator looked at it, it appeared that the public assistance arrearage accrued as part of the modification adjustments should be less than $1100. But in the spring of 2003, apparently as part of the modification adjustments, CSED disbursed $2167.45 to DPA.

CSSD disbursed almost twice as much money ($2,167) to DPA as appeared to be owed. Further, the account balance showed support owing for February 2003, but CSSD disbursed a payment to DPA arrears without satisfying the current obligation. In other words, CSSD apparently disbursed money to DPA arrears *before* paying ongoing support to the custodial parent, contrary to expressed CSSD policy.

The ombudsman investigator was unable to understand CSSD's disbursements to DPA and the custodial mother, and thus unable to explain CSSD's decisions to the complainant. The investigator therefore seconded the custodial mother's request for a full audit of the CSSD account. Based on this information, the ombudsman finds this allegation ***justified.***

Allegation 4: CSSD made mistakes of fact in the complainant's child support account in 2003, resulting in the complainant being underpaid child support.

The ombudsman finds this allegation ***indeterminate.***

The Office of the Ombudsman's Policies and Procedures Manual at 4040(9) defines *based on a mistake of fact*:

> Those instances in which a significant part of the agency's decision is based on a misperception or misunderstanding as to the existence of relevant facts.

This allegation is found ***indeterminate*** because the ombudsman could not make any determination regarding the spring 2003 adjustments, due to the lack of usable information as discussed in the finding for Allegation 3. However, the custodial mother raised some concerns about the health insurance credit and visitation credits granted to the obligor father, and the ombudsman investigator was able to determine that most of these specific points were not supported by the evidence.

After the custodial mother contacted the ombudsman, she said that not only was she owed additional arrears, but also that CSSD was not calculating the health insurance and visitation credits correctly:

- She alleged that CSSD had reduced the non-custodial parent's monthly support obligation for double his proper health insurance credit, resulting in underpayment. She said that the court and CSSD had made a series of clerical errors that resulted in "double credit" being provided to the obligor.

- She alleged that the visitation credit for 2001 and 2002, as granted by CSSD on March 11, 2003, was too large, because the Wyoming court order was worded to provide a visitation credit affecting only the amount of support above the $450 minimum, so that the complainant would never receive less than $450 even when their child was on summer visitation with the obligor father.

- She alleged that the obligor father did not in fact take all of his allotted visitation in 2001, and therefore the visitation credit was too large.

- In addition to the above, the custodial mother alleged generally that her CSSD caseworker did not answer her questions, and that the caseworker's supervisor, Melissa Marshall, did not return phone calls within a reasonable time. The ombudsman declined to investigate this complaint because this allegation appeared to be peripheral to the custodial mother's more concrete concerns.

Health Insurance Credit

The first master's report, filed September 12, 2002, set support at $813.35 per month, with a health insurance credit of $28.50, for a net monthly payment of $784.85. The problem was that the master's report stated that employer-provided housing added $15,000 to the obligor father's annual income,[34] but the master's support calculations attached to the report listed employer-provided housing as worth $18,000. On October 10, 2002, the master filed a correction to the master's report, stating that the employer-provided housing was indeed only $15,000, and that the support obligation must be recalculated to match. Using $15,000 as the value of the housing, the ombudsman investigator confirmed that the corrected support amount was $763.35 per month, without counting the health insurance credit. With the insurance credit ($28.50), the net support amount was $734.85. In fact, in the October 2002 support order, the court ordered support payments of $763.35 per month, minus the health insurance credit, for a net amount of $734.85, as provided in the corrected master's report. This is also the amount that CSSD began assessing, effective July 2001, pursuant to the modification order. There was no "double credit" or clerical error.

However, by the time the court signed the modification order, CSSD had already allowed an increase in the health insurance credit, to $37.40 per month, effective in October 2002. This was actually allowed by the court order, which provides for administrative adjustment of the insurance credit. Thus, the custodial mother began seeing payments of $725.95, slightly less than the amount listed in the court order. This was legitimate, but she apparently did not understand what had happened and was suspicious of CSSD.

Visitation Credit

The custodial mother argued that the 1995 Wyoming court order (amending the 1993 order) prohibited any visitation abatement in support that dropped the support amount below $450 per month. The 1993 order stated:

> 3. The Plaintiff [Smith] is hereby ordered to pay child support in the minimum amount of $450.00 per month, beginning on July 1, 1993.
>
> Child support will abate by one-half after such time as the Plaintiff has the child with him for a period of fourteen (14) days or more.

[34] Master's Report on Child Support Modification, 9/12/02, p. 3.

The custodial mother argued that, even if the 1993 order allowed the $450 to be reduced during visitation, the 1995 order modified the original and set $450 per month as the absolute minimum, regardless of visitation. She relied upon the following language in the 1995 order:

> Plaintiff's obligation to pay child support shall be in the minimum sum of $450.00 per month and shall continue to be payable on or before the 1st day of each month.

This language in the 1995 order was in a paragraph explaining the annual income reporting requirements, and the paragraph did not actually discuss the visitation credit. The 1995 order did not expressly limit the visitation credit to those amounts above $450, and the paragraph cited by the custodial mother does not appear intended to do so. The complainant's reading of the 1995 court order is defeated by Wyoming's consistent interpretation of the order. The Wyoming clerk of court repeatedly granted a visitation credit by halving the $450 during summer visitation. The Wyoming District Court had several years (1995-2001) in which it could have been asked to clarify the matter, but the visitation credit continued. CSSD, in halving the $450 to grant a visitation credit, simply interpreted the support order in the same way that Wyoming did, and CSSD had no reason to do otherwise.

CSSD granted a visitation credit for June 15, 2001, through August 15, 2001, and June 15, 2002, through August 15, 2002. For the period of June 15, 2001 through June 30, 2001, CSSD applied the 50 percent abatement to the $450 per month support order that CSSD had been enforcing. For July 1, 2001 through August 15, 2001, and June 15, 2002 through August 15, 2002, CSSD applied the 50 percent abatement to $734.85 per month, pursuant to the Alaska modification order.

A table calculating the visitation credit follows:

SEE FOLLOWING PAGE

Calculations for Visitation Credit

Visitation Credit 6/15/01 – 6/30/01 (partial month)
$450 divided by 30 (# of days in June) = $15/day.
$15 x 16 days = $240 (support due for 6/15 through 6/30, without visitation credit).
½ x $240 = $120 (amount of credit for this period)

Visitation Credit 7/1/01 – 7/31/01 (whole month)
½ x $734.85 = $367.42 (amount of credit for full month of visitation)

Visitation Credit 8/1/01 – 8/15/01 (partial month)
$734.85 divided by 31 (# of days in August) = $23.70/day.
$23.70 x 15 days = $355.50 (support due for 15 days without visitation credit).
½ x $355.50 = $177.75 (amount of credit for first half of August).

Visitation Credit 6/15/02 – 6/30/02
$734.85 divided by 30 (# of days in June) = $24.50/day.
$24.50 x 16 days = $392.00 (support due without visitation credit).
½ x $392 = $196 (amount of credit for this period).

Visitation Credit 7/1/02 – 7/31/02
$367.42 (same as in 2001)

Visitation Credit 8/1/02 – 8/15/02

$177.75 (same as in 2001).

***TOTAL CREDIT* = $1406.34.**

This amount is six dollars less than the credit of $1412.11 granted by CSED on March 5, 2003. The CSED visitation credit also included some credit for interest, and this presumably accounts for the small difference.

The custodial mother also said that the obligor father did not actually use all of his visitation in 2001, and that CSSD's dates were therefore incorrect. On September 23, 2003, while the ombudsman investigator was drafting the preliminary report, the custodial mother faxed a copy of an Alaska Airline itinerary that showed the child traveling from the complainant's home city to the father's home on June 29, 2001 (not on June 15). The custodial mother wrote that she also faxed this information to Nessie Shores at CSSD. Because at the time the ombudsman prepared the preliminary report, it did not appear that CSSD had had an opportunity to evaluate and respond to the plane ticket information the custodial mother provided, the ombudsman considered this particular sub-issue premature for investigation.

Ombudsman Comment on Final Report: After CSSD responded to the preliminary report, the ombudsman investigator, Ms. Leibowitz, received a fax from the custodial mother.[35] The fax included a copy of a CSSD letter to the custodial mother, dated November 13, 2003. The letter responded to a November 7 fax from the custodial mother. It does not mention the September 23, 2003, fax in which the custodial mother provided airline ticket information for 2001. Caseworker Donna Delaney wrote that CSSD would not reconsider the 2001 visitation credit.

The custodial mother presented evidence that CSSD granted the non-custodial parent, the obligor father, a visitation credit for two weeks of visitation (June 15, 2001 through June 28, 2001) that he did not in fact exercise. CSSD refused to consider this evidence.

Pursuant to 15 AAC 125.480, the custodial parent may object to a visitation credit by requesting an administrative review. However, the deadline for requesting review is 30 days after receipt of notice of the credit. The custodial mother received notice of the visitation credit in March 2003. CSSD records show that she phoned CSSD within 30 days to argue that the support order did not allow a visitation credit that reduced support to less than $450; however, there is no sign that the custodial mother raised the accuracy of the 2001 visitation dates at that time. She first presented evidence on that point in September 2003, well after the 30-day deadline.

Because the custodial mother missed the regulatory deadline for contesting the visitation credit, CSSD was not obligated to consider her evidence several months later. Therefore, this item is not the subject of a recommendation. However, the ombudsman suggests that CSSD contact the obligor father, and ask him if he in fact exercised the full two months of visitation credited in 2001, and, if not, whether he will return the approximately $112 in visitation credit that is at issue here. This suggestion is made because CSSD has inadvertently created an impression of bias: on the one hand, in 2003 CSSD decided to recoup an overpayment from the custodial mother that it first learned about in 1999; on the other hand, CSSD refused to reconsider a visitation credit awarded six months before, despite credible evidence that CSSD had awarded the obligor father more credit than was due. CSSD is technically correct, but the overall result leaves a poor impression of the agency.

FINDING OF RECORD - ENFORCEMENT

Under 21 AAC 20.210, when investigation of a complaint with multiple allegations results in some allegations being found *justified* and some *not supported* or *indeterminate, the complaint is found partially justified*. The ombudsman finds this portion of the complaint ***partially justified.***

Allegation 1, alleging unreasonable failure to fully enforce Wyoming support order, was found *unsupported*.

Allegation 2, alleging inefficiency due to failure to seek modification of the Wyoming order for several years, was found *partially justified*.

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[35] The custodial mother provided this correspondence on April 28, 2004.

Allegation 3, alleging incomprehensible explanations of CSSD's account adjustments, was found *justified*.

Allegation 4, alleging errors in the CSSD adjustments after the 2002 modification, was found *indeterminate*.

Agency Response: CSSD agreed with the findings for Allegations 1 through 3. Regarding Allegation 4, CSSD wrote only, "No response necessary."

FINAL RECOMMENDATIONS - ENFORCEMENT

The ombudsman exists to resolve individuals' problems with government when possible. The ombudsman's other primary function is to prevent the recurrence of similar problems. The problems the complainant experienced with enforcement and modification of her support order are historic, and there is no prospective solution. Contrary to her belief, it does not appear that additional pre-modification arrears exist for CSSD to pursue. The recommendations presented here are intended to prevent similar problems elsewhere.

> ***Recommendation 1*: *CSSD should use it's discretionary review power to review and modify "unenforceable" support orders whenever possible.***

The ombudsman recognizes that CSSD is far more able now to process modifications than it was in 1998-2000. However, the ombudsman does not know if CSSD is using its processing power to address the specific problem of "unenforceable" interstate orders. If CSSD is unwilling or unable to enforce other states' problematically worded orders, then CSSD has a responsibility to promptly modify the orders whenever CSSD has jurisdiction to do so.

Agency response: CSSD responded by inserting a new section into the staff desk manual. The new section is titled "Unenforceable orders" and reads:

> Primarily other states orders requiring CSED to perform outside State Statutes or agency policies. For example: OS [other state] order that directs the NCP to submit income information annually to the court to modify support or reevaluate arrears for a prior period or any order than requires special handling. All unenforceable orders WILL be staffed with the supervisor and manager. Once reviewed by the supervisor and manager, they will determine if the order will require a modification or referral back to the OS (in consultation with our AGs).

When asked for clarification of what actions CSSD would take after the supervisor reviewed the support order, Complaint Resolution Manager Lisa Taylor responded:

> Supervisors will be required to staff with the managers and discuss the case with the AG's office for guidance. Of course, CSED's action will depend upon the unenforceable portion of the order and what it pertains to. Depending upon the outcome of the staffing process, CSED will take

> whatever course of action is recommended by management and the AG's office. If a modification is necessary, we will start that process for the case parties, or, if it's state debt, we'll state initiate the modification. If it requires the involvement of another state agency for the modification then we'll follow our procedures for that action.[36]

Ombudsman comments on agency response: CSSD's response should keep "unenforceable" support orders from slipping through the cracks for years at a time. Furthermore, CSSD appears to be committed to initiating modification of these orders when CSSD can do so, i.e. in cases where the support obligation is assigned to the state. CSSD will also "start the process" for parents where CSSD is not collecting state debt. In cases not involving state debt, it is not clear whether CSSD will actually initiate a discretionary modification review pursuant to 15 AAC 125.316(b)(3)(C) (CSSD may initiate a modification review when "other circumstances exist that may justify a modification of the support obligation.")

CSSD's response implements the substance of Recommendation 1, because it demonstrates that if the support order cannot be fully enforced using Alaska procedures, then CSSD will check for the possibility of modification by an Alaska tribunal. If the order can be modified in Alaska, then CSSD has committed itself to initiating modification review when support is assigned to the state. This response should prevent recurrence of a situation such as the custodial mother's. In cases where the support is not assigned, it appears that CSSD will at least notify the parties of the availability of a modification review.

> ***Recommendation 2: For "unenforceable" support orders that cannot be modified by Alaska, CSSD should explain what steps CSSD will take to have the issuing state's child support agency calculate the support due or modify the order.***

In the custodial mother's case, CSSD had the ability to have the support order modified to make it into something fully enforceable under Alaska law, because both parents and the child all resided in Alaska. But in cases where UIFSA does not grant CSSD the jurisdiction to modify the order, CSSD can ask another state's child support agency to calculate the support due or take enforcement actions. Furthermore, CSSD can even ask the other state to modify the support order. Under UIFSA, CSSD cannot choose to consider another state's order "unenforceable," but CSSD can ask the issuing state to assist CSSD in enforcing the terms of the order, and the other state is obliged to provide that assistance.

In this case, CSSD took an essentially passive role toward the support order, even though the custodial parent and child were in Alaska and qualified for public assistance. The ombudsman asks CSSD to respond and explain how CSSD currently works to obtain maximum enforcement – or modification if necessary – for interstate cases that feature the sort of indeterminate "additional payment" or "automatic adjustment" clauses that made the complainant's support order "unenforceable."

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[36] Email from Lisa Taylor to Beth Leibowitz, April 7, 2004.

Agency response: CSSD stated that the new desk manual section cited above is also the CSSD response to Recommendation 2.

Ombudsman comments on agency response: CSSD declined to explain how the agency would follow up if the unenforceable support order could not be modified by Alaska. Lisa Taylor wrote: "If it requires the involvement of another state agency for the modification then we'll follow our procedures for that action."

Subsequent to CSSD's response to the preliminary report, CSSD proposed to amend 15 AAC 125.316 by adding a subsection requiring that, in cases where CSSD has received a request for modification review but lacks jurisdiction, CSSD will refer the matter to the state with modification jurisdiction.[37] This proposed regulatory change addresses some of the concerns that prompted Recommendation 2.

The ombudsman would prefer to read CSSD's response as a commitment to persuading the state issuing the unenforceable support order to modify it, or to at least provide Alaska CSSD with usable calculations of the debt owed on an ongoing basis.[38] However, the response does not commit CSSD to doing more than making a simple referral. CSSD's response partially addresses the ombudsman's concerns.

Recommendation 3: CSSD should consider how the agency can improve explanations of its payment and disbursement decisions.

This case may be unusually complicated. However, CSSD was unable to explain its own accounting to either the complainant or to an ombudsman investigator with plenty of time, education and a basic understanding of the system. The ombudsman does not expect CSSD personnel to be able to explain everything to everyone every time; however, the level of incomprehensibility presented here was extreme.

Agency response: CSSD changed the Notice of Adjustment to improve clarity.

Ombudsman comments on agency response: Unfortunately, the problem is not confined to the format of the Notice of Adjustment used by CSSD. The ombudsman investigator was unable to understand a partial accounting history provided to supplement the adjustment notices. CSSD's response to Recommendation 3 only partially satisfies the ombudsman's concerns.

The ombudsman suggests that CSSD change the format of the automated audit summaries. When a parent questions the accounting in their case, and asks for a history of the case, the automated audit summary is one of the primary document provided by CSSD. However, the summary does not track disbursements. For example, in this case, the destination of the incoming payments was critical, but the automated audit summary was of no use for that issue. Similarly, the summary tracks "adjustments" and "credits" but there is no coding to indicate what the changes are for, i.e. visitation, health

[37] CSSD published the proposed regulations on October 21, 2004.

[38] An "unenforceable" support order is often one that does not contain a sum certain for the total monthly support obligation. If the issuing state could respond to CSSD by interpreting its own order and calculating the exact amount due, then CSSD could proceed with full enforcement.

insurance, credit for payments made to another state's child support agency, etc. In short, the automated audit summary is indeed easy to read, but its usefulness is extremely limited.

The ombudsman investigator became convinced of the need for a more usable audit summary after comparing it to the online accounting history used by CSSD workers. During the investigation, CSSD provided a partial accounting history in April 2003, and then, in July 2003, provided a complete history beginning with case establishment in December 1998. The accounting history consisted of screen prints from the CSED/NSTAR computer program: the "Fin/NSTAR Utilities/NSTAR Tran Log – Summary," and the "Fin/Distribution/Case Log Display – Trans Date." When supplemented with a legend listing the most frequent abbreviations, the screen prints enabled the ombudsman to trace payments, disbursements, credits, and adjustments. The screen prints are not intended for public use, and are not user friendly; however, they were still more useful than the automated audit summary.

As CSSD strives to improve the quality of the explanations it offers parents, CSSD should increase the quantity of information provided in the "automated audit summary" to make it comparable to an actual accounting history. In many of the cases the ombudsman reviews, the disbursement history is at least as important as the payment history, because many cases involve disbursements to both the state and to the custodial parent. In other cases, providing a listing or adjustments and credits is of no use without at least a minimal indication of the purpose of the adjustment or credit.

INVESTIGATION – CSSD'S MANUAL AUDIT OF THE ACCOUNT

Introduction

The custodial mother opened her Alaska public assistance account on June 23, 1998.[39] As part of this process, she would have been required to sign an agreement to turn over her child support checks and rights to collect child support (including arrears). Because the custodial mother already had received the June child support before signing up with DPA, she was not obliged to turn the June support payment over to CSSD. She did report the June child support to DPA as income. The problems started in July 1998.

From June 23, 1998, until October 31, 2001, the custodial mother was on ATAP for approximately 35 months. She requested closure of her ATAP case several times, but during this time did not stay off public assistance more than one or two months at a time. The custodial mother has not been on public assistance since October 2001. CSSD calculated that through the life of her ATAP/support case, the custodial mother improperly retained $4,276.13 in child support while receiving ATAP benefits, contrary to her assignment of child support rights to the state. This amount decreased due to subsequent underpayments. The CSSD auditor found a net overpayment of $2,560.66 as of June 2003 and CSSD immediately suspended support payments to the custodial mother from July through mid October.

[39] She received $61 in ATAP benefits for June 1998.

If the custodial mother accrued $4,276 in improperly retained support by the time she last closed off of ATAP in 2001, how did it happen? The ombudsman investigator analyzed CSSD's audit, CSSD computerized notes (screen prints), the DPA benefit and payment issuance histories for the custodial mother, and DPA file notes. This report breaks the alleged overpayment into blocks, taken in chronological order.

July 1, 1998 to September 30, 1998

The CSSD audit stated that the custodial mother owed CSSD $1,125 for support checks she received but did not forward to CSSD.

During this time the obligor father sent his child support checks to Wyoming, and the Wyoming clerk of court forwarded the obligor father's personal checks to the custodial mother's address of record. The Wyoming payment history shows that the Wyoming court clerk's office received three checks from the obligor father in this three-month period:

- #3164 for $450 (July 2, 1998);
- #3177 for $225 (August 1, 1998);
- #3197 for $450 (August 27, 1998).

Because the Wyoming clerk's office was simply forwarding the obligor's personal checks, the clerk of court did not keep a record to show whether the checks were cashed or not.[40]

CSSD Child Support Specialist III Nessie Shores stated that CSSD had no record that CSSD received any of these checks. Therefore, CSSD concluded that the custodial mother kept and cashed the three checks instead of turning them in to CSSD as required, and calculated an overpayment of $1,125 for this time period.

The custodial mother maintained that she turned in two or more support checks by giving them to a DPA office worker, who supposedly forwarded the checks to CSSD's central office in Anchorage. The DPA case file supports the custodial mother's statement. The reports of contact in the DPA case file indicate that the custodial mother did in fact hand over two support checks. The handwritten note for August 28, 1998 reads: "[client] submitted child support check $225 – forwarded to CSSD." The note for September 19 reads: "[client] submitted child support check $450.00 rec'd 8/24/98; forwarded to CSSD." Kathy Ensor, who was the custodial mother's DPA caseworker for part of 1998 and 1999, confirmed that the notes were hers, and that they meant that the custodial mother had handed in two checks. Ms. Ensor said that she and other DPA workers "encouraged" clients to send support checks directly to CSSD, but DPA staff would often accept and forward support checks if the client handed them in. The file also contains

[40] Interview of child support clerk, Wyoming District Court for (Name removed) County, 7/21/03.

photocopies of two checks, #3177 and #3197. The photocopy of #3177 ($225) is initialed by Ms. Ensor.[41]

Subsequent review of CSSD's accounting history[42] shows CSSD recorded receipt of a $450 support check on September 30, 1998. This is almost certainly the check handed in to the local DPA office on September 19. (CSSD lacks any record of the $225 check received by DPA in August.) Because CSSD had not established a support case for the custodial mother as of September, the record indicates that CSSD held the $450 check. Then, for no apparent reason, this check was disbursed to the custodial mother about nine months later, on June 29, 1999, even though the custodial mother was still receiving ATAP.

It appears that DPA caught up with the anomalous June 29, 1999, disbursement shortly after it happened. DPA held a Fair Hearing and determined in November 1999 that the custodial mother had been overpaid $380 in benefits because she received child support income in July 1999.[43] DPA then recouped the $380 over a period of several months in 2000. DPA recouped $380 instead of $450 because $380 was the amount that the custodial mother received in excess ATAP once the child support income was counted as "unearned income."[44] It appears that DPA dealt with this particular child support payment and its relationship to public assistance payments to DPA's satisfaction.

Of the three support checks that supposedly made up the $1,125 overpayment received during this period, the evidence indicates the following:

(1) $450 was turned in to DPA staff who forwarded the check to CSSD, which mistakenly disbursed it to the custodial mother nine months later. The resultant ATAP overpayment was recouped by DPA;

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[41] In addition to Ms. Ensor's handwritten notes in the DPA file, DPA and CSSD screen prints support the conclusion that the custodial mother handed in two checks. According to the CSSD computer screen prints, on February 9, 1999 the custodial mother reported to CSSD that she had turned over two or three checks to public assistance. On March 15, 1999, the CSSD screen print reads: "Call to Katy [Kathy] Ensor . . . concerning checks mailed directly to CP. CP turned in two checks to PA that were mailed to CSSD 8/24/98 check $450 and 7/23 check for $225. Kathy will check with CP concerning the cks." A DPA screen print from March 26, 1999, reads: "Review of case indicates clt [client] knew she was to turn in child support; copy of child support checks received July 23, 1998 $225.00 & 8/24/98 $450.00 turned into [DPA district office] & forwarded to CSSD in Anchorage; MRF [monthly report form] dated September 14, 1998 states child support sent to dept."

[42] On August 27, 2003, Lisa Taylor provided the ombudsman investigator with screen prints of CSSD's online accounting history for the complainant's case. The printouts are from the Fin/NSTAR Utilities/NSTAR Transaction Log – Summary; printouts after July 2001 are titled "State of Alaska CSED/NSTAR Fin/Distribution/Case Log Display." The printouts show receipt of money, "distribution" of money to this case, and disbursements to both public assistance and to the custodial mother. These printouts are referred to in the ombudsman report as "CSSD accounting history" or "CSSD financial history."

[43] Report of Claim Determination, November 15, 1999. The source of the DPA determination was almost certainly the June 29, 1999 disbursement of the 1998 check. The regular June and July 1999 child support checks were received by CSSD and disbursed to welfare as expected.

[44] Fifty dollars of the $450 child support would have counted as a pass-through payment, and was thus a legitimate disbursement to the custodial mother, not an overpayment.

(2) $225 was turned in to DPA and lost while in state custody;

(3) $450 was sent to the custodial mother in early July 1998 and is unaccounted for.

Out of the $1,125 that the CSSD determined was overpaid during this time period, only the unaccounted-for check for $450 (7/2/98) can be reasonably treated as an overpayment. The custodial mother did the right thing with $675 worth of support checks when she handed them to her DPA caseworker, Kathy Ensor. Out of that $675, CSSD should not have required the custodial mother to reimburse the state for $225 that DPA or CSSD lost track of after she turned it in; the custodial mother is not at fault. Nor should CSSD have charged her for the mistakenly disbursed $450, because DPA already counted the disbursement as income to her and already recouped the benefits that were overpaid, based on that income. Upon scrutiny, the alleged $1125 overpayment of support in this time period shrinks to $450.

October 1, 1998 to March 31, 1999

During this period, the Wyoming clerk of court forwarded four child support checks totaling $1,800 to the custodial mother. The custodial mother told DPA that she took all four checks – uncashed – to the Anchorage CSSD office on March 12, 1999, and that Tom Rainey, a CSSD caseworker, told her she could cash them, which she then did.[45] When the DPA caseworker called CSSD shortly thereafter, Mr. Rainey denied that he authorized the custodial mother to cash the check.[46] CSSD has a record that the custodial mother met with a CSSD caseworker on March 12, but no documentation that he told her it was acceptable to cash support checks. [47] The custodial mother told the ombudsman investigator that she considered the $1,800 to be reimbursement for visitation travel costs, not regular child support. As all four checks were labeled by month (i.e. "November"), and matched monthly child support amounts, her argument is unconvincing.

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[45] March 12 was not the first time the custodial mother asked about how she should treat these checks. The CSSD screen print from February 9, 1999, states that the custodial mother contacted CSSD and asked what to do with child support checks she received from Wyoming. According to the CSSD note, she was told to bring the checks to the regional CSSD office, which would "pouch" them to Anchorage. However, the same note indicates that CSSD could not tell the custodial mother what had happened to checks she had previously delivered to DPA. the custodial mother wrote that she decided to bring the checks to Anchorage herself, while she was there for a medical appointment in March.

[46] DPA screen print entered by Kathy Ensor, 3/26/99, noting telephone call to Tom Rainey.

[47] The CSSD screen print for March 12, 1999, records that the custodial mother made a "walk in" visit to CSSD, and reads as follows: "CP had many questions on the MSO calculation primary concern is no acct of investment income. AP has accts at [bank names redacted] and says income is over $150K. Would like for C. McCorm to look over case and would like a status ltr. Will cc mail mcc." While some of this is too abbreviated to be easily readable, it has no mention of four support checks being discussed by the custodial mother, or of the CSSD worker telling her what to do with child support checks. Russell Crisp of CSSD confirmed that this is the only computerized note for March 12. Another CSSD note, dated March 19, 1999, lists a conversation with Kathy Ensor of DPA, and reads in relevant part: "Informed Kathy there is note in system Tom Raniney [sic] talked to her on 3/16 but there is no mention of him telling her that she could cash the checks." There is no record of her contacting CSSD on March 16; March 12 appears to be the correct date, based on both the custodial mother's account and CSSD's own screen prints.

The CSSD screen prints and the DPA file notes from March and April 1999 indicate that both agencies knew of the four checks and that the custodial mother had cashed them. the custodial mother did not keep her actions a secret. In fact, she brought DPA a photocopy of the four checks, with an attached note stating that she had cashed them and that Mr. Rainey had told her to cash the checks. At the time, DPA began proceedings to penalize the custodial mother for non-cooperation with CSSD. She requested a Fair Hearing (an administrative hearing conducted by a hearing officer).

However, DPA then "conceded" the Fair Hearing. The file notes reflect the DPA workers' conclusion that the custodial mother had a "misunderstanding" with CSSD rather than intending to thwart the cooperation requirement, and therefore DPA decided not to pursue non-cooperation penalties.[48] However, DPA apparently still intended to recoup an overpayment of benefits from the custodial mother, counting the four months of child support payments as previously unreported income. The DPA caseworker, Ms. Ensor, prepared the paperwork for recouping the overpayment,[49] and believes that she sent the paperwork to the claims unit. But the claims unit has no record of receiving the paperwork, and DPA never processed or recouped the overpayment.[50]

Because nothing further happened after DPA conceded the hearing, the custodial mother believed that DPA's concession meant that not only was she exonerated from non-cooperation, but that she had prevailed on her argument that the $1,800 was not an overpayment. Because DPA never sent her a notice of overpayment she had some reason for her belief that all was well.

January 2000

For two months in the fall of 1999, the custodial mother was not receiving ATAP. She reopened on ATAP on December 6, 1999.[51] Then, in January 2000, she received the January child support payment of $450 from the Wyoming clerk of court. She did not report the check to DPA to be counted as income, and CSSD has no record of having received the money. This $450 does appear to be accurately categorized as an overpayment to the custodial mother.[52]

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[48] DPA provided a written notice to the custodial mother on April 15, 1999, titled "Notice of Cancellation of Fair Hearing." The notice stated, "The reason your hearing will not be held is: AGENCY CONCEDES THE ISSUE OF NON COOPERATION WITH CSED." The notice did not explain that DPA would still seek to recover the overpayment, even though it would not impose a penalty for non-cooperation.

[49] Report of Claim Determination, 5/17/99, DPA file.

[50] Interviews with Trish Cole, DPA Claims Unit, June 17, 2002, June 30, 2003. Ms. Cole reported that the claims unit processed only one overpayment in the custodial mother's case history. That overpayment was for $380 and occurred in July 1999. It was recouped in 2000 out of ongoing benefit payments, after the custodial mother lost a fair hearing. That recoupment was not related to the October 1998 through January 1999 period.

[51] She reported the $450 child support payment received in December, and CSSD properly did not consider it an overpayment.

[52] The CSSD audit's footnote 5 states that the February and March 2000 payments ($450 each) also were not reported and were therefore credited to the custodial mother's "arrears" (overpayment). However, the footnote does not match the audit itself: on the audit, those two payments are credited to the public assistance arrearage. The audit – rather than the footnote -- appears correct, as the CSSD accounting history shows CSSD receipt of support checks in February and March 2000, and the DPA records show the

June 1, 2000 to September 30, 2000

The CSSD audit shows two months of overpayments in this period: July 2000 ($225), and September 2000 ($450). Both of these payments were actually received by CSSD and then disbursed to the custodial mother, even though she was on ATAP and had therefore assigned her child support to the state. Nessie Shores said that CSSD forwarded these payments to the custodial mother because of an "interface problem" with DPA. Ordinarily, CSSD expected the parent on ATAP to turn in direct payments of child support received from the non-custodial parent. However, CSSD could not reasonably expect the custodial mother to divine that she was supposed to send back checks that CSSD itself had just disbursed to her. This is especially true because when the custodial mother reported some of the support payments to DPA, the DPA workers did not advise her to return the checks. The ombudsman would consider this set of payments to be entirely CSSD's error and not justly chargeable to the custodial mother, except that the evidence indicates that the custodial mother failed to report some of the support checks to DPA as income, after she received and kept them. At that time, DPA practice was to treat the support checks as unearned income, and to expect the parent to report the support on the monthly report form.[53] The custodial mother reported some of the support checks, but not all.

She reopened her ATAP case on May 12, 2000, and received ATAP benefits until September 30.[54] From June to September 2000, CSSD issued the custodial mother four support checks: $450, $225, $225, and $450.[55]

During this period, DPA simply reduced ATAP benefits to account for retained child support, thus preventing an overpayment of cash benefits. The custodial mother was required to file a monthly report form (MRF) at the beginning of each month that she received assistance, listing income received in the preceding month, including any child

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custodial mother receiving $50 child support pass-through payments for February and March 2000, implying that CSSD received the February and March support checks and issued pass-through payments accordingly.

[53] The ATAP manual in effect from 1999 through at least 2002 contained a provision that appears inconsistent with the assignment of child support to the state:

> If a caretaker receives a child support payment from another state's child support agency, the payment does not need to be signed over to CSED. There is no penalty if a caretaker keeps a support payment from another state's child support agency. However, the payment, less any amount disregarded under the $50 pass-through provision, counts as unearned income. The caseworker must notify CSED of the situation, telling CSED the total amount of the child support payment and the amount disregarded under the $50 pass-through payment provision. [ATAP Manual 717-4(2)].

This provision, however, is not precisely applicable to the custodial mother's situation in 2000, because she was receiving checks from Alaska CSSD, not directly from another state's child support agency.

[54] If she received her May child support before the 12th, then it would not have been assigned to the state when she reopened on ATAP. The May 2000 payment is not at issue.

[55] The custodial mother provided the ombudsman copies of some of the child support checks she had received over the years. The collection was probably not complete, but included the June through September 2000 checks issued by CSSD. These were state checks, not personal checks of the non-custodial parent, the obligor father.

support she kept.[56] DPA then reduced the following month's ATAP benefit to account for the child support income. Under this system, called "retrospective budgeting," countable income received one month actually affected the level of ATAP benefits issued two months later.[57]

The custodial mother's MRFs[58] did not cover all of the checks received in summer 2000. DPA's benefit history indicates that her benefits were reduced in July and September to offset retained child support.[59] But two months of child support remained uncounted as income in the ATAP benefit history. This leaves two checks, $450 and $225, of child support during this period that was neither retained by CSSD for welfare reimbursement nor offset by a DPA reduction in ATAP benefits. CSSD calculated $675 as an overpayment in this period.

The problem with CSSD's calculation is that the custodial mother was not necessarily at fault for the failure to report the September 2000 child support payment of $450. CSSD disbursed a support check to the custodial mother on September 13, 2000. To properly report this income to DPA, as with the other CSSD disbursements in 2000, the custodial mother would have been required to report the $450 as income on her October MRF, which would result in a reduction of benefits in November. But she closed her ATAP case in September 2000. Once she closed her ATAP account, DPA did not expect her to file an October MRF. The custodial mother's reporting responsibility did not extend to reporting the September child support to DPA.

It appears that the custodial mother's inconsistent reporting contributed to some of the problem, but not in the case of the September 2000 disbursement ($450). This money went to the custodial mother because of the interface problem between CSSD and DPA, and the DPA income monthly reporting system did not catch the payment because it was not set up to do so. She did not contribute to that particular error, although her inconsistent reporting did contribute to a $225 overpayment that summer. [60] Given the

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[56] Under the "retrospective" benefit calculation used by DPA until fall of 2001, the income reported on the MRF was used to calculate the following month's benefits. Thus, income received in June would be reported at the beginning of July and would then affect the benefit amount in August. The exception was the first two months of benefits, during which benefits were based on income received or expected in the same month as the benefit issuance. This system of reporting was replaced in September 2001.

[57] In other words, $400 received in September would be reported at the beginning of October, and would result in lower ATAP benefits in November. DPA discontinued this reporting system in September 2001.

[58] The DPA file contained MRFs filed on June 30, 2000 ($450 received May 15, 2000); July 5, 2000 ($450 received June 15, 2000; and August 28, 2000 (no income reported).

[59] DPA shows that the July benefits were calculated based on $450 of income, and the September benefits were calculated based on $175 of income. The $175 is presumably a $225 child support payment minus the $50 pass-through. It is unclear why the $450 child support payment was not similarly reduced to $400.

[60] There is yet another wrinkle to the DPA/CSSD interface problem. DPA apparently became aware of unreported child support from the summer of 2000, and the caseworker forwarded an overpayment calculation of $683 to the claims unit, according to a DPA screen print dated February 14, 2001, entered by Kathy Ensor. It is not clear whether the lack of recoupment was an oversight, or whether it was because the issue was previously settled in a November 2000 Fair Hearing involving ATAP benefits in June through August 2000. A "Disposition of Investigation" dated February 5, 2001, states, "At this time, it was decided that there was no overpayment in the ATAP and Medicaid programs. . . . Therefore this case is being closed without action as the Agency determined that no overpayment occurred during the time period in question."

custodial mother's lack of fault regarding the $450, it is unjust for CSSD to now seek recoupment for that amount.

December 2000

CSSD also issued the custodial mother a $450 support check in December 2000, when she was still receiving ATAP. CSSD auditors calculated she was overpaid by this amount. However, for December 2000, the custodial mother properly reported the $450 to DPA as unearned income, and her ATAP benefits were reduced accordingly.[61] CSSD should not be considering the $450 in December 2000 as an "overpayment," because DPA has already accounted for this money, and does not need to be reimbursed for this amount.

February 2001 to July 2001: CSSD Disbursements to Complainant

As in 2000, CSSD received child support payments from Wyoming, but disbursed the support to the custodial mother while she was on ATAP. From February through May 2001, CSSD issued checks to the custodial mother, so she received the support payments from CSSD while she was on ATAP. From February through July 2001, DPA treated the custodial mother's child support payments as unearned income. For all of these months, the custodial mother reported income of $400 ($450 minus $50 pass-through). Her ATAP benefits were only $395 per month, i.e. about half what they were when she did not report child support income.

In June 2001, DPA and CSSD consulted about this situation. CSSD then kept the June support check, and sent a $50 pass-through payment. The CSSD audit also indicates that CSSD received and retained the "July" check (actually dated in late June)[62] for public assistance arrears, although CSSD did not send a pass-through payment. But in June and July, the custodial mother continued to receive the reduced ATAP benefits ($395) based on the assumption that she was receiving $400 of income – even while CSSD ceased sending that income.

Was the custodial mother shorted on public assistance benefits while CSSD retained the June and July child support checks? Not necessarily. Under DPA's retrospective budgeting[63] method, benefits for a given month depended on income from two months

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However, some DPA screen prints from 2000 indicate that the main issue in the November 2000 hearing was whether the custodial mother had been overpaid due to failing to meet residency requirements, because she was outside of Alaska for a large portion of summer 2000; her child support may not have been an issue in the hearing. As with the overpayment in October 1998 through January 1999, the custodial mother apparently assumed that all was well, because DPA took no further action.

[61] DPA records show $400 in "countable income" attributed to the custodial mother in February 2001, the month when income received in December 2000 would have affected the ATAP payment. The February 2001 ATAP benefit was reduced to account for the December 2000 income. Fifty dollars out of the $450 was not counted, pursuant to the policy of not including the first $50 of child support in countable income.

[62] The "July" payment was apparently made in late June. The obligor father paid support at the beginning of June (Wyoming check issued June 8), and then made another payment on June 25 (Wyoming issued its check on June 26). This second amount apparently was intended to cover July, as the obligor father did not make any payment during July 2001.

[63] DPA ceased using retrospective budgeting after September 2001.

prior. Therefore CSSD's retention of the June and July 2001 child support payments and the corresponding drop in the custodial mother's income should have affected the calculation of ATAP benefits issued in August and September reflected as a loss of income and increased ATAP benefits in August and September. And in fact, this is what happened: the ATAP benefits issued in August and September were $715 each month, and based on zero income (as reported from June and July).[64]

In the meantime, the "July" check (dated June 25, 2001 in the CSSD audit) is problematic. Although the CSSD audit records that it was received and applied to public assistance reimbursement, the CSSD accounting history does not show its receipt, at least not in June, July or any six months thereafter. The Wyoming State Disbursement Unit recorded that it mailed the June 25, 2001 check to the custodial mother's Alaska address, not to CSSD.[65] The Wyoming District Court clerk's office provided records indicating that the custodial mother endorsed the checks dated June 26, August 15, September 10, and October 10, 2001.[66] The ombudsman investigator was unable to find any record that the custodial mother had either reported the "July" check to DPA as income, or turned the money over to CSSD, and the custodial mother was unable to explain what had happened. However, in August 2001, she wrote to DPA demanding a Fair Hearing stating CSSD had "wrongfully retained" both her June and July child support.[67] This demand is not consistent with the custodial mother receiving and keeping a July support check – an action about which she probably would have kept quiet rather than drawing attention to it by a hearing request. The investigator was unable to reach a conclusion about whether the CSSD audit correctly accounted for the June 25, 2001, child support payment.

August 2001 to October 2001

August 2001 is the final overpayment listed by the CSSD audit. The audit shows $225 as having been sent directly to the custodial mother from Wyoming, not through CSSD. The Wyoming clerk of court's office confirmed that they sent the August check directly to the custodial mother's Alaska address, and their records indicate that she endorsed it. She did not report the August check to DPA and apparently did not turn it in to CSSD. However, her failure to report that check to DPA was possibly due to DPA's change from "retrospective" reporting to "prospective" reporting. In September 2001, DPA switched its entire income-reporting format, and ceased using retrospective budgeting. The copy of

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[64] Note that in the first two months that a client opened or reopened an ATAP case, DPA did not use retrospective budgeting, but instead tried to track the income actually available in those two months. For example, in December 2000, when the custodial mother had just reopened her ATAP case, DPA calculated benefits counting the $450 child support received that month as income.

[65] According to Tee McNamar of the Wyoming State Disbursement Unit (SDU), Wyoming mailed support checks to Alaska CSSD from November 29, 2000, until June 2001; but then the Wyoming agency concluded that Alaska CSSD had not filed the appropriate paperwork and began sending the checks directly to the custodial mother regardless of whether or not she was receiving public assistance in Alaska. Ms. McNamar said that SDU's records showed the check issued in late June (for July 2001) was mailed to the custodial mother's address, not CSSD, and that the checks for August, September and October were also mailed to the custodial mother.

[66] The clerk of court's office provided Ms. Leibowitz with faxed copies of the checks showing both front and back. The back of each check appeared to have been signed by the complainant.

[67] DPA denied the custodial mother a hearing, because the child support (including the absence of a pass-through payment in July) was not considered a DPA problem.

the custodial mother's September MRF shows the new reporting format. Unlike the old MRFs, the new form did not provide any line on which to report child support from the previous month (August). Monica Windom of DPA explained that August income would have gone unreported due to the change in the reporting system.[68] In short, DPA did not provide any method for reporting income received in August 2001.

Nor would the custodial mother necessarily have realized that she was supposed to turn in the August 2001 support check to CSSD. Given that CSSD had been consistently issuing checks to the custodial mother in 2000 and 2001, it would be understandable if she did not see the need to turn over the August check, even though it arrived from Wyoming instead of CSSD. Instead, DPA and CSSD had been treating the child support as reportable unearned income, and DPA had been reducing ATAP benefits to account for the support checks. The custodial mother could reasonably believe that she was acting correctly as long as she reported the support payment to DPA. However, DPA's change in reporting method made reporting the August 2001 amount practically impossible.

The supposed overpayment in August 2001 appears to be the result of DPA's system change, a factor beyond the custodial mother's control, combined with the contradictory message sent by CSSD's practice of issuing her child support checks even while she was on ATAP.

But there also may have been problems with the September and October 2001 child support payments. The CSSD audit shows that these two payments were received and disbursed to public assistance. But the CSSD accounting history does not show contemporaneous receipt of any support checks,[69] although CSSD eventually adjusted the account to give the obligor father credit for payments made through Wyoming. Wyoming confirmed that the obligor father made those payments. Wyoming recorded sending the September and October checks to the custodial mother, not to CSSD. DPA records do not show that the custodial mother reported any income to DPA for September or October, even though – unlike August – she had the means to do so. However, the DPA benefit history shows CSSD made a pass-through payment in October, which implies that CSSD did receive the October support payment. There was no pass-through payment recorded in September.

Pass-Through Payments

When CSSD calculated overpayments in 2003 it did not account for the $50 pass-through payments that would have been paid to the custodial mother each month that CSSD collected support. For instance, when CSSD noted that the custodial mother improperly retained $450 while on ATAP in January 2000, CSSD counted the entire $450 as an overpayment. In fact, $50 of that amount would have been passed through to the custodial mother if CSSD had processed the support payment normally. The CSSD audit consistently ignores the $50 pass-throughs in calculating the custodial mother's overpayment. In contrast, when DPA calculated an ATAP overpayment based on the

[68] Interview with Monica Windom, September 11, 2003.

[69] The accounting history shows receipt of a payment from the obligor father's PFD, but it also shows that payment being "backed out" – manually removed from the record -- rather than distributed.

custodial mother's receipt of child support income, DPA counted only $400 of income for purposes of determining the recoupment amount. Thus, the audit figures are inflated by the number of pass-through payments CSSD did not consider.

ANALYSIS AND FINDINGS: CSSD AUDIT AND ATAP PAYMENTS

AS 24.55.150 provides that the ombudsman may investigate administrative acts that the ombudsman has reason to believe might be contrary to law, unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion, unnecessarily discriminatory, based on mistake of fact, based on improper or irrelevant grounds, unsupported by an adequate statement of reasons, performed in an inefficient or discourteous manner, or otherwise erroneous.

Allegation 5: CSSD made mistakes of fact in its audit of the complainant's account.

The ombudsman finds this allegation ***justified***.

The Office of the Ombudsman's Policies and Procedures Manual at 4040(9) defines *based on a mistake of fact*:

> Those instances in which a significant part of the agency's decision is based on a misperception or misunderstanding as to the existence of relevant facts.

Below is a table summarizing the results of the ombudsman investigation. Amounts highlighted in bold font are amounts that were mistakenly counted as overpayments. (Amounts in italics will be discussed in Allegations 6 and 7.)

Month and Year	Overpayment Calculated by CSSD	Result of Ombudsman Investigation. **Bold** indicates error in CSSD audit. *Italics* indicate overpayments for which collection raises fairness issues.
7/98	$450	Accurate
8/98	**$225**	Mistaken – the custodial mother handed in the check.
9/98	**$450**	Mistaken – CSSD received check then mistakenly disbursed it. DPA recouped overpayment in 2000.
10/98	*$450*	*Accurate – but see analysis in Allegations 6 & 7.*
11/98	*$450*	*Accurate – but see analysis in Allegations 6 & 7.*
12/98	*$450*	*Accurate – but see analysis in Allegations 6 & 7.*
01/99	*$450*	*Accurate – but see analysis in Allegations 6 & 7.*
01/00	$450	Accurate.
7/00	$225	Accurate
9/00	*$450*	*Accurate, but the custodial mother not at fault.*
12/00	**$450**	Mistaken. the custodial mother reported this income to DPA and DPA cut ATAP benefits accordingly.
6/01	0	The custodial mother argued that CSSD "wrongfully retained

		the check" while DPA simultaneously counted the check as income and reduced her benefits; but she was not in fact underpaid ATAP benefits.
7/01	0	The custodial mother may have been overpaid – no evidence that CSSD received check or that she reported the income to DPA. Also, see above.
8/01	*$225*	*Accurate – but the custodial mother was not at fault, because DPA didn't provide a method to report this income.*
9/01	0	The custodial mother may have been overpaid – no evidence found that CSSD received check or that complainant reported the amount to DPA.
10/01	0	The custodial mother may have been overpaid – not clear if CSSD received check or that complainant reported the income to DPA. However, DPA noted a $50 pass-through payment, implying that CSSD received the support payment.
---		**The complainant did not receive ATAP after October 2001.**

CSSD calculated that the custodial mother owed the State of Alaska $2,560.66. Once the factual errors noted in bold are corrected, the amount owed by the custodial mother should be no more than $1,435.66. By suspending the custodial mother's ongoing support, CSSD has already obtained $2,560.66 in reimbursement.

With two of these amounts – September 1998 and December 2000 – DPA counted the support payment as unearned income and reduced the custodial mother's benefits. The reductions were not necessarily a dollar-for-dollar match with the support payment. However, because DPA long ago counted the support as income in order to reduce ATAP benefits, it would be unjust for CSSD to now retrieve that income in the name of reimbursing DPA. For example, when CSSD mistakenly disbursed the September 1998 payment in summer of 1999, DPA calculated a benefit overpayment of $380 and recouped that amount, not the $450 that CSSD decided to recover for the same incident. Once the $50 pass-through is discounted, there remains a $20 difference between DPA's recoupment and the child support overpayment calculated by CSSD. DPA considered itself fully satisfied once it counted the support as income. If CSSD truly believes that it needs to recoup another $20 from the custodial mother because DPA only recouped $380, then CSSD should instead consider absorbing that petty sum as the cost of poor accounting.

The August 1998 payment was actually received by DPA, a state agency, when the custodial mother turned it over to her DPA caseworker. Whatever became of the money, it was not retained by the custodial mother and was delivered to the State of Alaska. CSSD should not have required her to repay that amount.

In addition to the above errors, CSSD did not take into account the $50 pass-through payments that the custodial mother usually would have received. CSSD is requiring reimbursement of amounts that she legitimately would have kept. Thus, CSSD's calculation of the overpayment is inflated by including, for each month of overpayment, $50 that the custodial mother was actually entitled to retain out of each month's support.

Finally, there may also be an error in the CSSD accounting for the child support payments dated June 25, 2001, September 5, 2001, and October 5, 2001. These payments were recorded in the CSSD audit as having been distributed to the public assistance arrears, but CSSD's financial history does not show receipt of any support checks from June 15, 2001 to April 2002.[70] The ombudsman prefers not to act to a complainant's detriment when investigating a complaint, but CSSD should review these months to be sure that CSSD did in fact receive these three payments.

Based on this information, the ombudsman finds this allegation ***justified.***

Agency Response to Allegation 5: CSSD accepted this finding.

Allegation 6: CSSD unfairly pursued the complainant, a custodial parent, for overpayments owed to the Division of Public Assistance, even though the Division of Public Assistance had declined to recoup the overpayments for more than four years.

The ombudsman finds this allegation ***justified.***

This allegation involves the $1,800 in support checks that the custodial mother cashed in March 1999. She said that she believed the matter was resolved more than four years ago, and protested CSSD raising the issue now. She pointed out that she was originally prepared to present her side of the story in a DPA hearing, but that DPA conceded the hearing. She felt it was unfair for CSSD to revisit the issue.

Procedurally, a complaint that an administrative act was "unfair" usually will involve an examination of one or more of the following elements:

> (A) adequate and reasonable notice of the matter was not provided to the complainant;
>
> (B) adequate opportunity has not been given for a person having an interest in a decision to be heard or, if applicable, to conduct an examination or cross-examination to secure full disclosure of the facts;
>
> (C) the decision maker is not without bias or other disqualification;
>
> (D) the decision is not made on the record: the action or decision has been made without consideration of pertinent facts and circumstances, or the testimony, evidence, or point of view of those having a legitimate interest in the decision has been disregarded;
>
> (E) the decision is not supported by reasons or by a statement of evidence relied on; or
>
> (F) the agency is inconsistent in its application of standards or principles in the making of a decision.

[70] The NSTAR financial history does show payment through the obligor's PFD, but also shows that payment being "backed out" rather than disbursed.

In March and April 1999, DPA began non-cooperation proceedings against the custodial mother, based on her retention of four child support checks, totaling $1,800. She requested a "fair hearing" as provided for by statute. She contended that a CSSD employee, Tom Rainey, had told her she could cash the support checks, and that he told her the money would count as reimbursement for visitation travel expenses, rather than ordinary child support. She argued that because the money was a reimbursement, it was not child support or countable income for ATAP purposes.

Before the issues could be decided in a hearing, DPA staff concluded that the custodial mother was not intentionally "non-cooperative," and that she had retained the checks due to a misunderstanding with CSSD. DPA therefore "conceded" the hearing on April 15, 1999. No hearing took place. The custodial mother believed that DPA's "concession" covered all arguments, including her argument that she had not been overpaid. She thus believed that the matter was fully resolved, and that there was no overpayment

The catch is that the concession addressed only "non-cooperation," and DPA still intended to recoup an overpayment of benefits caused by the custodial mother retaining the $1,800.[71] After DPA conceded the "non-cooperation" issue on April 15, Ms. Ensor prepared a Notice of Claim Determination on May 17, 1999; the determination was supposed to be forwarded to the DPA claims unit. If the DPA claims unit had processed the paperwork, then the custodial mother would have been disillusioned by a notice of overpayment explaining that she was expected to repay $1,668.[72] She would then have been able to request a Fair Hearing to contest the validity and amount of the overpayment.[73]

Instead, nothing happened, and the custodial mother was thus supported in her belief that no overpayment had occurred. The question is whether it is fair for CSSD to seek recovery more than four years after DPA dropped the ball on the same problem. It is also more than four years since CSSD itself became aware of the matter, and CSSD itself declined to recoup the money until now.

The allegation of unfairness involves two aspects: first, the four-year delay; and second, the procedural discrepancy between the hearing process provided by DPA in cases of alleged overpayment versus the summary decision made by CSSD.

Alaska law contains statutes of limitation precisely because there is a point at which it is neither just nor practical to pursue a debt. In March 1999, CSSD and DPA knew that the custodial mother had cashed four child support checks while receiving ATAP, but CSSD did not act until June 2003 – more than four years later. The CSSD employee who the custodial mother says authorized her retention of the checks, Tom Rainey, no longer even

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[71] DPA distinguishes between "non-cooperation," which requires deliberate behavior by the client, and a mere overpayment, which may result from various client or DPA errors, without "bad motive" on part of the client.

[72] The Report of Claim Determination, dated May 17, 1999, lists an ATAP overpayment of $1353, and a Food Stamp overpayment of $315 for the four months in question. DPA was not attempting to recoup the actual child support, but the amount of benefits overpaid due to $1800 in child support income.

[73] Interview with Pat Foglia, DHSS hearing officer, August 22, 2003.

works at CSSD. Whatever corroboration the custodial mother might have gathered in 1999 is now just a faded memory. Is it too late to pursue this matter?

Judging by the statute of limitation that would apply to a lawsuit to recover this money, the answer appears to be "no." AS 09.10.120 sets a six-year limitation on "an action brought in the name of or for the benefit of the state."[74] The Alaska Supreme Court has applied the six-year limitation to an action by CSSD to collect public assistance arrears from an obligor.[75] Thus six years is the standard recognized by Alaska law. If CSSD had waited for more than six years to take action against the custodial mother, the ombudsman would consider the delay unfair.[76] But in this case CSSD has acted within six years, and so CSSD's action falls within the standards set by Alaska law. The delay, although disturbing, does not justify the allegation of unfairness.

The second issue is the inconsistency in procedure, and it is this point that supports the allegation of unfairness. It appears that DPA was prepared to address the $1,800 as income that caused an overpayment of benefits, in which case DPA action would involve recovering the excess benefit amount.[77] CSSD appears equally able to recover the support money, as money assigned to the state for DPA's benefit. But there is considerable difference in how the individual is treated, depending on which agency pursues the matter. When DPA issues a notice of overpayment, the client can request an administrative hearing, which is conducted by a hearing officer from outside the Division of Public Assistance.[78] The client can have his or her side of the story heard. In contrast, when CSSD decided to deal with the same overpayment, it did so by sending the custodial mother a copy of the audit, with a statement that her ongoing support was suspended. Three weeks after announcing the overpayment, CSSD indicated that the custodial mother could submit documentation to disprove the audit results, but there was no indication of how or when CSSD would review such documents, and no hearing or appeal was available, other than to "take the matter back to court."[79] Not only is there a

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[74] AS 09.10.120(a) reads as follows: "An action brought in the name of or for the benefit of the state, any political subdivision, or public corporation may be commenced only within six years of the date of accrual of the cause of action. However, if the action is for relief on the ground of fraud, the limitation commences from the time of discovery by the aggrieved party of the facts constituting the fraud."

[75] Agen v. State, Dep't of Revenue, 945 P.2d 1215 (Alaska 1997).

[76] Strictly speaking, the statute of limitations applies to lawsuits, not administrative actions by CSSD. But it would be bizarre, to say the least, to have CSSD attempt an administrative recoupment that it could not enforce in court because the statute of limitations had expired.

[77] The May 17, 1999 claim determination indicated that from October 1998 through January 1999, the custodial mother had been overpaid $1,353 in ATAP benefits and $315 in food stamp benefits, a total overpayment of $1,668.

[78] Pat Foglia explained that the hearing officers are still part of the Department of Health and Social Services, but now report to the commissioner's office, not to DPA.

[79] In a letter on June 25, 2003, Lisa Taylor of CSSD informed the custodial mother that "Your only recourse, if you still disagree with an audit after we've addressed your written concerns, is to take the matter back to court." It is not clear whether this was intended as notice that the custodial mother could ask for judicial review of the audit results through an administrative appeal, in which case, it is not clear when the 30-day appeal period would run. Alternatively, this may have been an invitation to continue or reopen the child support litigation that had supposedly concluded when the court entered the modification order.

huge difference in the degree of procedural care used, but even the amount assessed may vary, depending on which agency takes action.

In other words, when DPA collects money from its clients or former clients, the agency makes an effort to provide due process. CSSD makes no such effort. While CSSD views this matter as a child support overpayment, this is not about the obligor – it is about money owed to DPA. This is a case of ATAP overpayment, which DPA intended – and failed – to address in 1999. CSSD is sidestepping DPA's process.

The ombudsman is well aware that the custodial mother would not necessarily prevail in a hearing; the ombudsman did not accept the custodial mother's explanation that the $1,800 was a reimbursement for expenses and thus not an overpayment. The point, however, is that she has been deprived of a hearing.

This situation meets the criteria for "unfair." The process is grossly inconsistent. An ATAP client who retains a support payment may be subject to DPA or CSSD: those who are dealt with by DPA receive a hearing, while those who meet with CSSD's process receive none. The complainant, whose only substantial income was at stake, was not allowed to present her side of the story. CSSD did not provide her with that opportunity. CSSD's auditor may or may not have considered the earlier correspondence from the custodial mother about this issue; it is unclear whether the CSSD "record" used to complete the audit included her point of view.

Based on this information, the ombudsman finds this allegation ***justified.***

Agency Response to Allegation 6: CSSD disagreed with the finding, and responded to the preliminary report as follows:

> CSED disagrees with the finding. DPA's concession of the hearing requested by [the custodial mother] centered around a non-cooperation finding, not the payments [the custodial mother] cashed while she was receiving welfare. The fact that DPA failed to follow through with their actions to recoup the payments incorrectly cashed by [the custodial mother] does not stop CSED from pursuing reimbursement to the state.[80]

CSSD's response to Allegation 7 also included a reply relevant to Allegation 6:

> Although we disagree with the finding, we concede that an administrative review process needs to be developed to address similar overpayment situations. We have already begun the process to develop a procedure and to include the requirement for an administrative review in very limited accounting adjustment situations into regulation.

[80] Letter of January 30, 2004, from Lisa Taylor, CSSD, to Ombudsman Linda Lord-Jenkins.

Ombudsman Comments on Agency Response: CSSD is correct that DPA's concession involved the non-cooperation issue, and did not directly address the overpayments.[81] However, CSSD has missed the point. Of course, CSSD can recoup the overpayment even if DPA declines to do so. That power does not make CSSD's summary decision-making process fair, especially because luck of the draw apparently determined which agency's procedure applied to the custodial mother, and even the amount that she was to pay back. With DPA, the custodial mother would have received a notice of overpayment of $1,668, with an opportunity for a hearing (DPA); with CSSD, she received a decision that her child's support was suspended to recoup an overpayment of $1800 for the same time period, without any explanation of how to contest the determination, and no chance of an administrative hearing.

CSSD has agreed to provide an administrative review in similar overpayment cases. This provides a defined route by which the parent can contest CSSD's calculation of an overpayment, and improves CSSD's procedure. This reduces but does not eliminate the discrepancy between DPA's and CSSD's methods of addressing retained child support.

However, the finding stands, because chance still determines (1) whether the parent receives a hearing; and (2) how the overpayment is calculated. DPA and CSSD both have the ability to address child support retained by an ATAP client, but the results still differ substantially depending on which agency moves first. This randomness is unnecessary in Alaska's government.

Allegation 7: CSSD unreasonably suspended all of the complainant's child support for three months, and reduced the fourth month's disbursement.

The ombudsman finds this allegation ***justified.***

The Office of the Ombudsman Policies and Procedures manual at 4040(2) defines *unreasonable* as:

> (A) a procedure adopted and followed by an agency in the management of a program is inconsistent with, or fails to achieve, the purposes of the program,
>
> (B) a procedure that defeats the complainant's valid application for a right or program benefit, or
>
> (C) an act that is inconsistent with agency policy and thereby places the complainant at a disadvantage to all others.

After establishing that the custodial mother owed money to the State of Alaska, CSSD chose to recover the money by immediately suspending all of the complainant's ongoing child support until the overpayment was recouped. CSSD ignored a request from the ombudsman that it delay suspension of the support payments pending the outcome of the ombudsman's investigation. In contrast, CSSD will not withhold 100 percent of an

[81] DPA caseworker Kathy Ensor prepared the paperwork for a notice of overpayment in 1999, but the claims unit never sent the notice; thus, DPA did not start its process to address the alleged overpayment (versus the non-cooperation issue).

obligor's paycheck, no matter how large the arrears. But here, CSSD had no problem with cutting off 100 percent of the custodial mother and the child's support for three months, and reducing it by almost 50 percent for the fourth month.

The ombudsman does not consider CSSD's choice a reasonable method for recovering the money. CSSD was created to enforce child support obligations, thus providing greater economic stability for children. Suspending all ongoing support payments to a custodial parent for three months does not appear calculated to forward CSSD's primary mission. Although CSSD does have a second mandate, which is to collect reimbursement for public assistance benefits expended by the State of Alaska, CSSD's collection method in this case hindered CSSD's primary mission. To illustrate that summary suspension of all support is not a reasonable method, the ombudsman invites CSSD to consider recoupment methods used by the ATAP program, by the Department of Labor's Employment Security Division, and by CSSD's own director's policy for overpayments owed to a custodial parent.

Division of Public Assistance regulation 7 AAC 45.570(a) states in part, "the division shall pursue collection from a current recipient of ATAP benefits or a former recipient of ATAP or AFDC benefits who received an overpayment regardless of the amount or cause of the overpayment." The regulation then provides that DPA will send a notice of the overpayment, offer several payment options, and allow the individual a hearing if the overpayment is disputed. DPA does not collect by suspending 100 percent of ongoing benefit payments:

> (e) A current recipient of ATAP benefits must, within 30 days of the date printed on the overpayment notice, repay the total amount of the overpayment to the division, or the division will reduce that assistance unit's future ATAP payments by withholding 10 percent of the maximum amount payable to an assistance unit of the same size with no countable income for the number of months necessary to recover the overpayment. If a current recipient receives both an underpayment and an overpayment, the division shall adjust the underpayment amount to compensate for the overpayment amount. A current recipient, whose assistance is terminated before the full amount of an overpayment has been recovered, will remain liable for the balance and will be considered a "former recipient" under (g) of this section.
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> * * *
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> (g) Except as otherwise provided in this section, if a former recipient has received an ATAP or AFDC overpayment, the division shall send a notice requesting
>
> (1) immediate repayment of the entire balance due;
>
> (2) monthly repayments of no less than 10 percent, or quarterly repayments of no less than 30 percent, of the maximum amount payable to an assistance unit of the same size with no countable income during the last month in which assistance was received; or

> (3) a valid legal assignment to the division of the permanent fund dividend of the caretaker relative or relatives of the former recipient's assistance unit.
>
> (h) A former recipient may choose a combination of payment options in (g) of this section as long as the total annual repayment amount will be at least equal to the total annual repayment amount that would be paid if only the option in (g)(2) of this section were selected. A former recipient who selects the repayment option in (g)(3) of this section shall execute a new valid assignment of each year's permanent fund dividend until the overpayment is recovered in full.
> (i) If the division determines that a former recipient, or a member of the former recipient's household, will suffer extreme hardship if the former recipient is required to repay the amount required in (g)(2) of this section, the division may
> (1) allow the former recipient to repay less than the amount required in (g)(2) of this section; or
> (2) temporarily suspend repayment.

See 7 AAC 45.570.[82] In both 45.570(e) (current ATAP recipient with overpayment) and 45.570(g) (former client), DPA provides for repayment at a fraction of the benefit amount. In other words, DPA expects repayment, but will not demand an entire month's income at one blow.

The Department of Labor (DOL) has a mechanism for recovering overpayments of unemployment benefits. AS 23.20.390 provides that the recipient is liable for the overpayment. AS 23.20.290(b) requires that the department send the individual a notice of liability. It then allows for deduction of the overpayment from ongoing unemployment benefits: "The amount, if not previously collected, shall be deducted from future benefits payable to the individual." However, the statute goes on to provide for waiver of liability if the individual received the benefits in good faith and "recovery of those benefits would be against equity and good conscience." *See* AS 23.20.390(b). The statute also provides that the Department of Labor may declare an overpayment uncollectible and cancel it after two years. A DOL regulation implementing the statute, 8 AAC 85.220, further provides that in certain cases, DOL will deduct 50 percent of ongoing weekly benefits, rather than the entire amount.[83] The regulation also attempts to define "good faith" and when collection is "against equity and good conscience."[84]

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[82] The regulation also provides for suspension of collection efforts against a former ATAP client when the efforts are not cost-effective, with collection only if the client begins receiving ATAP again. See 7 AAC 45.570(k).

[83] 8 AAC 85.220(h) states:

> (h) To recover an overpayment established under AS 23.20.390, the director may
> (1) accept payment, in full, or as part of a repayment schedule under an agreement by the individual and the department, by cash, check, or money order;
> (2) deduct the full weekly benefit amount for each week that benefits are payable to an individual until the overpayment is recovered; or
> (3) upon request of the individual, deduct at a rate of 50 percent of the full weekly benefit amount if
> (A) the individual received the overpaid benefits in good faith as described in (c) of this section;

AS 23.20.390 provides for an administrative hearing if the recipient appeals the determination of liability within thirty days. AS 23.20.390(e) states that an appeal "may be made in the same manner and to the same extent as provided by AS 23.20.340 and 23.20.410 – 23.20.470." AS 23.20.410 – 23.20.470 outline an administrative hearing process, presided over by a "referee" not previously involved in the determination, and including the opportunity to present witnesses.

CSSD has no regulation regarding recoupment of overpayments, but CSSD does have a director's policy about overpayments. Director's Policy No. 39 (issued by then-Director John Main, June 16, 2003) provides that CSSD will contact the overpaid obligee and attempt to set up a repayment agreement. CSSD may offer options such as payment in full, installment payments, assignment of Permanent Fund Dividend, or an offset against ongoing support payments. Only if the obligee fails to respond to a series of three "default letters," will CSSD proceed to recoup the overpayment from ongoing support without agreement from the obligee. Under the policy, if the obligee responds and refuses to do a repayment agreement, then CSSD will seek a court judgment against the obligee.

(B) sufficient benefits are available to the individual when the overpayment liability is established to allow recovery of the overpayment at a rate of 50 percent of the full weekly benefit amount; and
(C) the amount of the overpayment is greater than two times the full weekly benefit amount.

[84] 8 AAC 85.220 provides in part:

(a) A determination of overpayment liability issued under AS 23.20.390 will include a statement of the right to request a waiver of repayment of the overpayment. An individual may request a waiver within 30 days after the date on which the determination of liability becomes final. The director may extend this period if the request is delayed by circumstances beyond the individual's control.
(b) The director shall waive repayment of an overpayment of benefits to an individual under AS 23.20.390 if
(1) the individual has died or received the benefits in good faith;
(2) repayment would be against equity and good conscience; and
(3) the request for a waiver meets the requirements of this section.
(c) Benefits have been received in good faith if the overpayment was received without fault by the individual, and the individual did not have the capacity to recognize that he or she was incorrectly overpaid. Benefits have not been received in good faith if the individual
(1) negligently reports or fails to report information, which results in the overpayment; or
(2) knew or should have known that the individual was not lawfully entitled to receive the benefits.
(d) Repayment of an overpayment is against equity and good conscience if
(1) repayment in 12 consecutive monthly installments would cause great hardship to the individual, considering the current and potential income and other financial resources available to the individual and the individual's family;
(2) the overpayment resulted from a decision of the department or a court overturning a determination of eligibility made at any level of appeal, and the individual did not withhold or conceal pertinent information on any claim for benefits or in any investigation or proceeding;
(3) the individual received the overpaid benefits by relying on clearly incorrect advice, given to the individual by the division or an employment security agency of another state, which the individual could not recognize as incorrect; or
(4) the overpayment cannot be waived under (1) - (3) of this subsection, but the department determines that recovery would be injurious to the individual after consideration of the standards in (1) - (3) of this subsection, and any extraordinary circumstances.

The CSSD policy provides for repayment options, and for judicial proceedings to prove CSSD's case if the obligee contests the overpayment. However, CSSD did not apply the policy to the custodial mother, claiming that the policy was inapplicable. Lisa Taylor wrote:

> The overpayment policy does not apply to CP [custodial parent] because we have a way to correct the problem by reducing her overpayment by the amount NCP owes each month. The policy is aimed at CP's [custodial parents] who have been overpaid because of CSED error and the process we have to go through to assist the NCP in getting back their money. There's still an ongoing support obligation in this case so NCP is getting back his money by not having to pay his ongoing support for a period of time.[85]

This explanation does not appear consistent with the director's policy, which provides for a repayment agreement between CSSD and the overpaid custodial parent, even in cases where CSSD can recoup the amount from ongoing support payments. Also, the explanation simply does not match this case, because the obligor father, is not owed any of the money – the monetary dispute is between DPA and the custodial mother, not her and the obligor father. He is not owed any money.

However, despite the inconsistency in the explanation, Ms. Taylor is essentially correct in stating that the director's policy is not aimed at this type of case, because the director's policy defines "overpayment" as follows: "For 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*." (Emphasis added).

If the custodial mother owed money to the obligor father instead of the State, CSSD's policy would be to ask her to sign a repayment agreement, and, if she refused, to consider obtaining a judgment in court. Suspension of ongoing support appears to be reserved for a parent who fails to respond to a series of warning letters, or for enforcement of a judgment obtained in court. The CSSD director's policy does not endorse suspension of ongoing support as the first and only repayment method. But the custodial mother did not receive warning (default) letters, or an offer of a repayment agreement. Instead, CSSD appears to have created an unjustified distinction between custodial parents who owe the overpayment to the non-custodial parent and custodial parents who owe the amount to the State of Alaska.

When DPA and the Department of Labor recoup cash benefits they provide notice and multiple repayment options. Both agencies offer an administrative hearing if the benefits recipient contests the overpayment, and DPA offers a hearing before adverse action.[86] To avoid unnecessary damage to its clientele, DPA provides for a partial reduction in ongoing benefits until the overpayment is recovered, rather than a complete suspension of benefits. DOL is less solicitous, and provides for attachment of all weekly benefits until the overpayment is recouped. However, DOL also provides for full and partial waivers,

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[85] Email, Lisa Taylor to Beth Leibowitz, 8/27/03.

[86] Also, both DPA and DOL state their procedure clearly via published regulation.

and offers at least some clients the opportunity to pay back the money more gradually. CSSD itself has a policy of sending notice, and asking for a repayment agreement, before simply attaching ongoing support. Despite the fact that CSSD is created to serve a vulnerable population – one that often overlaps with DPA's clientele, in fact – in this case CSSD has acted without regard for any goal except recoupment of the calculated overpayment. In light of how other departments seek to recover overpayments, and in light of how CSSD itself proceeds with some overpayments, CSSD's treatment of the custodial mother is simply unreasonable. CSSD's program is supposed to assist custodial parents, not treat them with less regard than welfare recipients or unemployed laborers.

Agency Response to Allegation 7: CSSD disagreed with this finding, and responded as follows:

> [The custodial mother] received payment of support that was not due to her. She was paid future support. She received her child support early, just as if it had been paid early and sent out early. While we concede that the method used to recoup the money that [the custodial mother] was overpaid may be considered unfair, this is our procedure. There is no statutory or regulatory authority to have a hearing. The custodial parent received the money and should not have retained the money as a condition of applying for and receiving public assistance. Case parties can point out where they believe an error has occurred in the accounting of their case at any time throughout the life of the case. If we review the party's concern and determine that our actions are correct then the only recourse left to the party is to go to court.[87]

Ombudsman Comments on Agency Response: Allegation 7 addressed the method – complete suspension of ongoing support – used to recoup the overpayment calculated by CSSD. CSSD wrote in reply, "While we concede that the method used to recoup the money that [the custodial mother] was overpaid may be considered unfair, this is our procedure." In fact, this is *not* CSED's procedure, at least not as CSED's procedure is outlined in Director's Policy No. 39. When repayment is owed to the non-custodial parent, CSED does not suspend all ongoing support, unless the custodial parent agrees to that method of recoupment, or else fails to respond to three default letters. CSSD has not provided any rationale for treating an overpayment owed to DPA differently than an overpayment owed to a custodial parent.

Worse yet, CSSD's recoupment method is contrary to federal policy. While preparing the final investigative report, the ombudsman investigator found that the federal Office of Child Support Enforcement (OCSE)[88] has offered guidance on how states may recoup child support overpayments.

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[87] Letter of January 30, 2004, from Lisa Taylor, CSSD, to Ombudsman Linda Lord-Jenkins.

[88] United States Department of Health & Human Services, Administration for Children & Families, Office of Child Support Enforcement.

In 1997, OCSE issued an Action Transmittal to state child support agencies, OCSE-AT-97-13 (September 15, 1997). In that directive, OCSE provided the following question and answer:

> Q13: When custodial parents are overpaid, or warrants are returned by the bank to the SDU [State Distribution Unit] as insufficient funds, are States allowed under federal regulations to offset the overpayment from the custodial parent's next monthly support check?
>
> A13: No. All collections must be distributed in accordance with the requirements of section 457 of the Act. However, a State may recoup the overpayment to a custodial parent from the next monthly support payment if the custodial parent agrees to allow the State to do so.

On August 5, 2002, OCSE issued a policy interpretation, PIQ-02-01, on recoupment of a child support overpayment. The policy interpretation clarified that state child support agencies have three legitimate options for obtaining the custodial parent's "agreement" to recoupment: (1) express agreement; (2) agreement via signed permission when the custodial parent applies for services, consenting to incremental recoupment; (3) recoupment after the parent fails to respond to a series of letters (agreement by default). The federal memorandum provides in part:

> The Office of Child Support Enforcement (OCSE) has received several inquiries from states asking for policy guidance regarding options available for a state to recoup a child support overpayment. An overpayment can be a misdirected payment (payment sent to the wrong custodial parent by the state disbursement unit (SDU) vendor or state) or an erroneous payment based on a bad check or the reversal of an electronic payment due to insufficient funds. OCSE realizes that parents should not keep overpayments made in error. However, distribution rules for child support collections do not allow a state to recoup an overpayment of support through the intercept of a subsequent child support payment unless the custodial parent agrees.
>
> * * *
>
> However, as explained in the response to question #13 in OCSE Action Transmittal 97-13, a state may recoup the overpayment from the next or subsequent child support payment *only if the custodial parent agrees to allow the state to do so*. Permission should be documented written authority from the custodial parent allowing the state to recoup any payment the parent receives in error. States have indicated that custodial parents often do not respond to state letters requesting permission to recoup an overpayment from the next or subsequent child support payment and have asked for additional acceptable methods for obtaining client permission.

> States should have processes in place that minimize the need to pursue the recoupment of an overpayment. These include processes such as refusing further personal checks or requiring certified checks from obligors who have written bad checks and if the SDU is managed by a vendor, requiring the vendor to absorb its own errors. States with these processes in place can obtain client permission as follows:
>
> 1. Client permission to recoup an overpayment may be obtained during the IV-D application process. A state may consider client permission as a document that the custodial parent signs and indicates by checking a 'yes' or 'no' box, *that the state may withhold an incremental amount, at a reasonable rat*e, *from future child support payments to correct an overpayment*.
>
> 2. *When custodial parents do not respond to letters from the state requesting permission to recoup an overpayment from the next or subsequent child support payment, permission may be assumed when no response is received after a third letter asking for permission is sent to a custodial parent*. Each letter of request needs to allow the custodial parent a specified number of days to respond. The final letter needs to indicate that if the parent does not respond within the specified period of time, permission to recoup the overpayment from subsequent child support payments will be assumed by default. Default consent is only valid for a particular overpayment occurrence and does not automatically authorize the state to recoup for future overpayments. [Emphasis added].

In 2003, when CSSD calculated the overpayment, the custodial mother certainly did not agree to CSSD's suspension of ongoing child support as a repayment method. Second, there is no evidence that the custodial mother granted permission for recoupment out of ongoing child support when she applied for CSSD services. Even if she had signed such a consent when she applied for services, the OCSE policy provides for recoupment from ongoing support only in "an incremental amount, at a reasonable rate." Nor did CSSD obtain a "default consent," the other legitimate option offered by OCSE.

The ombudsman investigator contacted OCSE's regional office in Seattle, to discuss the policy interpretation. In particular, the investigator asked whether PIQ-02-01 applied to "retained support," i.e. support that should have been handed in pursuant to assignment of child support to the state. Child Support Specialist Jan Jensen said that PIQ-02-01 did apply to retained support as well as to other types of overpayments. She added that the foremost distribution rule for child support is "families first," which means that recoupment takes a back seat to distribution of ongoing support.

OCSE clearly has not endorsed suspending all of the ongoing support for as many months as it takes for CSSD to recoup the overpayment, as CSSD did in this case. In fact, the OCSE policy interpretation implicitly condemns the methodology employed by CSSD. CSSD ignored the federal policy that limits how CSSD may use ongoing support for recoupment.

Additional Agency Response: On July 27, 2004, the ombudsman asked CSSD to respond to the additional information regarding federal child support policy. CSSD responded on August 17, 2004. CSSD Director John Mallonee wrote:

> While we agree with the federal regulation that says we must not recoup overpayments from a custodial parent's ongoing support without their permission, we do not believe this is what happened in [the custodial mother]'s case. Let me explain:
>
> CSSD audited the case in June 2003. This audit determined [the custodial mother] had received ongoing child support payments before they were actually due to her. We call that 'futures.' Alaska does not pay 'futures' to our custodial parents. We disburse money only when it becomes owed. After the audit, we discovered we'd disbursed futures to [the custodial mother]. This was not an 'overpayment' as discussed in the scenarios listed in OCSE AT-97-13 and PIQ-02-01. It was entirely appropriate for us to retain the next several payments to our debt because [the custodial mother] had already received her ongoing child support for the months of July, August, September and a portion of October 2003. By continuing to pay her support for those months, we would have continued to pay future support that had not yet been assessed against [the obligor father] and was therefore not yet due to [the custodial mother].

Ombudsman Comments on Additional Response: The June 2003 CSSD audit states: "The ending balance indicates that the custodial mother has been overpaid in the amount of $2,560.66." The overpayment only became "futures" when the ombudsman questioned CSSD's recoupment method. Assistant Ombudsman Beth Leibowitz redacted the case parties' names, and then forwarded CSSD's response to the federal Office of Child Support Enforcement, requesting analysis of whether CSSD's position is consistent with federal policy.

In case that was not enough, CSSD's response refers to "future support that had not yet been assessed against the obligor father." The obligor father was in fact assessed support in all the months involved. Then, in July, August, September and October 2003, he continued to be assessed support and pay it. The dates of assessment of support against the obligor father have nothing to do with the issues in this case.

The finding that Allegation 7 is ***justified*** stands despite CSSD's response.

FINDING OF RECORD – AUDIT OF THE ACCOUNT

The ombudsman proposed to find this portion of the complaint ***justified.*** CSSD accepted the finding for Allegation 5 (mistakes in the 2003 audit of the custodial mother's account), but disagreed with Allegations 6 (fairness of pursuing old ATAP overpayment), and Allegation 7 (reasonableness of CSSD's method of recouping the overpayment by suspending all ongoing support until complete recoupment).

The ombudsman is unpersuaded by CSSD's arguments, and finds Allegations 5-7 ***justified*** based on the evidence uncovered in this investigation.

FINAL RECOMMENDATIONS – AUDIT OF ACCOUNT

The ombudsman exists to resolve individuals' problems with government when possible. The ombudsman's other primary function is to prevent the recurrence of similar problems. This report presents the opportunity for both types of recommendation. The ombudsman is aware that the custodial mother significantly contributed to her own problems, but this does not excuse CSSD from its obligation to treat her fairly and reasonably, and to make its conclusions as accurate as possible. Some of the recommendations address remedies that CSSD needs to provide in the custodial mother's individual case. Other recommendations involve steps CSSD can take to prevent future similar complaints.

Recommendation 4*: *CSSD should correct the mistakes in the CSSD audit.

The audit counted three payments as improperly retained by the custodial mother when the evidence indicates otherwise. This recommendation is self-explanatory. CSSD should be prepared to issue the custodial mother a check to restore support that CSSD mistakenly suspended, and this should occur as soon as possible.

However, CSSD may also have to correct the audit for three payments that in fact were overpayments to the custodial mother. The ombudsman's office prefers not to do harm to a complainant through an investigation, but we recommend that CSSD review the child support payments made in late June of 2001, September 2001, and October 2001. If CSSD can *prove* these amounts are, in fact, overpayments to the custodial mother, CSSD should correct the audit accordingly.

Agency Response: CSSD referred the custodial mother's case back to the auditor. CSSD issued an amended audit on March 19, 2004.[89] On March 22, 2004, CSSD issued the custodial mother a refund check of $675. This accounted for two payments in 1998 that CSSD mistakenly counted as overpayments.

Ombudsman Comments on Agency Response: In the response to the preliminary report, CSSD did not address the third erroneous overpayment, for December 2000. If this oversight was due to any drafting errors or lack of clarity in the preliminary investigative report, then the ombudsman apologizes for that problem. The relevant facts, however, were presented on page 37 of the preliminary report.[90] Therefore, the ombudsman provided an additional recommendation:

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[89] The Juneau Office of the Ombudsman received the amended audit on April 12, 2004.

[90] CSSD's online (NSTAR) accounting records show that CSSD disbursed $450 to the custodial mother on December 12, 2000. Although the ombudsman investigator was unable to locate a MRF for that month (the MRF for December should have been filed in January), DPA records show that in February 2001, DPA counted $400 as income and reduced the custodial mother's benefits to $395 (consistent with other months where DPA counted child support as income). Under DPA's retrospective reporting system, income received in December should have affected February benefits, and this is exactly what happened. In other

Recommendation 4A: CSSD should issue the custodial mother a refund of $450.

Agency Response: CSSD Director John Mallonee responded to the ombudsman's additional recommendations.[91] CSSD reviewed the ombudsman report, and agreed that the $450 overpayment attributed to December 2000 was not in fact an overpayment. CSSD agreed to issue an additional refund of $450 to the custodial mother.

Ombudsman Comments on Agency Response: CSSD has fully implemented Recommendations 4 and 4A by refunding money that was erroneously calculated as overpayments and recouped from ongoing child support in 2003.

Recommendation 5: CSSD should reduce the amount the complainant is required to reimburse to account for monthly pass-through amounts that the State would have disbursed to the complainant.

The portions that would normally be pass-through payments should not be claimed as "reimbursement," because the State cannot reasonably ask to be reimbursed for money that it would not have kept in the first place. If CSSD intends to claim the pass-through amounts as a punitive measure against custodial parents who do not turn over child support while on ATAP, then it should promulgate a regulation explaining and codifying its intention. In the meantime the overpayment should be reduced to account for "pass-through" amounts, i.e. $50 out of each month deemed to be in overpayment. CSSD should issue a refund to the custodial mother for pass-through amounts that CSSD collected as part of the overpayment.

Agency Response: On January 30, 2004, CSSD responded: "CSED agrees with the finding. If we determine that correction of the audit is necessary and that the custodial mother is due additional funds we will immediately ensure that a payment is sent to her." However, when CSSD issued the amended audit, on March 19, 2004, the audit did not reflect any change to account for pass-through payment amounts.

Ombudsman Comment on Agency Response: Despite preliminary "agreement," CSSD completely ignored this recommendation. CSSD implied that it accepted this recommendation, while in fact refusing to implement it. CSSD did not provide any explanation for its non-action.

Recommendation 6: CSSD should exercise discretion to waive collection of the September 2000 support payment that CSSD disbursed to the complainant, and that the complainant did not report to the Division of Public Assistance because the DPA reporting requirements did not cover it. CSSD should refund this amount to the complainant.

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words, DPA already accounted for the December 2000 child support and there was no overpayment to be recouped.

[91] After CSSD responded to the ombudsman's preliminary report, the ombudsman made additional recommendations to CSSD in order to address issues raised by CSSD's response. The ombudsman provided Recommendations 4A, 10A, and 10B to CSSD on July 27, 2004. CSSD Director John Mallonee responded to the additional recommendations via letter on August 17, 2004.

CSSD disbursed this payment to the custodial mother despite the fact that she was receiving public assistance, and had been on public assistance since May 2000 at that point. Nessie Shores of CSSD admitted this was a CSSD error due to interface problems with DPA. DPA and CSSD dealt with these problems by a sort of benign neglect, through relying on the ATAP client to report the support payment as income on the DPA monthly report form. In this instance, it is not the custodial mother's fault that this "fix" failed. She was not required or expected to file a report for income received in September 2000, because she was no longer receiving ATAP in October 2000. She complied with the applicable reporting requirements.

In other words, the custodial mother was in a poor position to prevent this overpayment from occurring. She had been consistently receiving checks printed by CSSD. Despite the assignment of child support rights, it would have required considerable second-guessing of the agency to then return the support checks to CSSD. She had been reporting the support payments to DPA at least some of the time, and had not received any instructions to do anything different. It was reasonable for her to conclude that all she needed to do was file required monthly report forms with DPA. Thus, when no report was required, she did not try to file one anyway (which DPA probably would have refused to accept).

In contrast, DPA and CSSD were both in a position to consult and to prevent this overpayment from accruing. Now, almost three years later, CSSD should acknowledge its responsibility for creating this problem by invoking its discretion to write off this loss, instead of taking it out of the parent's current child support.

Agency Response: CSSD wrote, "CSED agrees, but only to the point that CSED's investigation of the information reported in your findings is confirmed." However, CSSD did not implement this recommendation, as reflected by the March 19, 2004 audit. CSSD did not provide an explanation for its decision.

Ombudsman Comments on Agency Response: CSSD itself issued this child support payment to the custodial mother. Then she closed off of ATAP and DPA did not require her to report this payment – unlike other support payments that she had reported to DPA after CSSD disbursed them to her. To avoid this overpayment, the custodial mother was apparently supposed to either return CSSD's own check, or argue with her DPA caseworkers that she needed to report the income even though DPA did not provide any avenue to make the report. It is simply not reasonable at this point to charge the custodial mother with this overpayment when the situation was almost entirely created by CSSD and DPA's failure to interface appropriately. The agency response does not satisfy the ombudsman's recommendation.

> ***Recommendation 7: CSSD should exercise discretion to waive collection of the August 2001 support payment that the complainant did not report to DPA because of a change in DPA reporting requirements. CSSD should refund this amount to the complainant.***

This is similar to Recommendation 5. In this case, the custodial mother received the check from the Wyoming Clerk of Court instead of CSSD, so she was less justified in keeping the check rather than turning it in to CSSD. However, CSSD had – as in 2000 –

consistently disbursed checks to the custodial mother while she was on ATAP, at least until June 2001. DPA had treated the support as income without instructing the custodial mother that the support checks should properly be handed back to CSSD. Given this history with the agencies, it is not obvious that the custodial mother should have known that she was supposed to do something other than cash the check and file the required report with DPA.

The catch is that DPA simply did not take reports of August 2001 income. When DPA switched from "retrospective" to "prospective" budgeting for ATAP clients, DPA had a reporting "gap" for August 2001. This gap occurred in all ATAP accounts that were open during the changeover. Again, this is a case where the custodial mother was in a poor position to prevent this overpayment, relative to either DPA or CSSD. In other words, rather than penalize a custodial parent for an error which was not her fault, CSSD should exercise its discretion to write off this amount ($225).

However, this recommendation is conditional, because CSSD should also recheck the audit results for July through October 2001, to confirm that the August 2001 overpayment was the only one that occurred during that time period. If the August support payment was part of a pattern for which the custodial mother was responsible, then there is no rationale for CSSD to waive collection of the $225 child support payment from August 2001.

Agency Response: CSSD provided the same response as it did for Recommendation 6: "CSED agrees, but only to the point that CSED's investigation of the information reported in your findings is confirmed." CSSD refused to implement this recommendation, as reflected by the March 19, 2004 audit. Again, CSSD did not provide an explanation for its decision.

Ombudsman Comment on Agency Response: The recommendation still stands, for the reasons explained in the preliminary report. The agency response does not satisfy the ombudsman's recommendation.

> ***Recommendation 8: CSSD should forward welfare overpayment issues to DPA, to be addressed in the DPA hearing process after DPA issues a Notice of Overpayment.***

The custodial mother's history with DPA demonstrates that it was happenstance whether, on the one hand, she would be pursued by DPA for having excess income that caused an overpayment of ATAP and food stamp benefits, or, on the other hand, whether she would have her child support suspended by CSSD to recover overpaid child support. In either case, the issue is the same support check, but a bureaucratic roulette determined the type of process, i.e. hearing vs. no hearing, and formal notice explaining repayment options versus summary suspension of all ongoing child support. This happenstance may even determine the amount of money owed: for example, when the custodial mother erroneously received a child support check in July 1999, DPA dealt with the matter by holding a hearing and recouping $380 in ATAP benefits from partial reductions of

ongoing ATAP,[92] but CSSD's audit has resulted in CSSD addressing the same error by suspending $450 of the custodial mother's ongoing support.

First, the state cannot have a double recovery. Whatever amount is owed because of the overpayment, it cannot be recovered in full by both agencies, as happened in the above example. Second, the amount owed and the process for recovering it should be consistent for ATAP clients, regardless of which agency first spots the error.

The ombudsman does not necessarily believe that referral to DPA is the only viable option. But at the very least, CSSD and DPA need to consult and decide which agency's calculations will determine the amount to be recovered. At the moment, CSSD does not have an adequate process for recoupment – unlike DPA. Unless CSSD is going to develop that process, cases that are functionally ATAP overpayment issues should be referred to DPA.

Agency Response: On January 30, 2004, CSSD wrote, "CSED agrees with the finding that we should allow DPA to investigate welfare overpayments but not in a situation such as was discovered in this case."

When asked to explain this statement, Lisa Taylor of CSSD explained:

> DPA generally handles all fraud issues. CSED refers all issues of fraud to them for investigation and decisions. DPA tells us whether fraud exists or not. In this case, the fraud issues were only uncovered when we audited the case. Had we not audited the case, the issues may well never have come up because DPA had dropped the ball on their end when they failed to complete their investigation.[93]

Ombudsman Comment on Agency Response: This explanation appears to a be statement that CSSD refers "all" welfare fraud to DPA, followed by a contradictory statement that CSSD did not refer the custodial mother's case because CSSD found the overpayments itself. If CSSD's policy is to refer welfare overpayments back to DPA, the fact that CSSD found the problem itself in no way explains the refusal to refer.

Recommendation 8 was made in response to the considerable discrepancy in the process available to the custodial parent depending on whether DPA or CSSD pursues the welfare overpayment. The ombudsman recommended consistent referral to DPA because DPA appears better equipped than CSSD to provide due process for the parent accused of receiving the overpayment. CSSD has now committed to providing an administrative review in such situations, and CSSD has thus improved its procedure and thus partially satisfied the concerns that led to this recommendation. Also, CSSD has provided a flow chart indicating that it will refer overpayment issues to DPA, and give DPA an

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[92] The investigator does not know if DPA also recouped an amount from the custodial mother's food stamp benefits. The total recoupment may actually have exceeded $450.

[93] Email of April 7, 2004, from Lisa Taylor, CSSD Complaint Resolution Manager, to Beth Leibowitz, Assistant Ombudsman.

opportunity to follows its recoupment process before CSSD moves to recover the overpayment.

Recommendation 9: CSSD should avoid summary suspension of ongoing child support.

At the very least, CSSD should extend its current director's policy to cover all situations in which CSSD seeks to recover an overpayment from the custodial parent. After all, from the custodial parent's viewpoint, it does not matter whether CSSD is collecting the money for the obligor or for DPA. The hardship is the same. There is no justification for treating the custodial parent differently depending on which pocket recovers the funds.

The ombudsman recommends that CSSD seriously reconsider its entire approach to overpayments. When a non-custodial parent falls into arrears, CSSD provides an amortization chart to determine monthly wage withholding to pay off the arrears. CSSD is aware that withholding too high a percentage of the obligor's paycheck damages the obligor to the point that the harm outweighs the benefits of quicker collection. Of course, CSSD may attach bank accounts or permanent fund dividends to satisfy arrears, but the fact remains that CSSD limits itself to taking only a percentage of ongoing income. In contrast, when CSSD recouped the overpayment from the custodial mother, it saw no problem with taking all of her ongoing child support – effectively her entire paycheck. There is an unfavorable contrast between the amortization that CSSD provides for obligors owing arrears and CSSD's treatment of a custodial parent owing an overpayment. CSSD appears willing to treat a custodial parent more harshly than it would an obligor with substantial arrears. This is an embarrassment to CSSD and to the State of Alaska.

Agency Response: On January 30, 2004, CSSD responded, "CSED agrees with this finding. The implementation of an administrative review for this situation will address this recommendation."

Ombudsman Comments on Agency Response: The provision for administrative review partially satisfies the ombudsman's concern about CSSD's process. The use of an administrative review procedure – the same procedure that is available for a number of other CSSD decision – is more reasonable that CSSD's announcement that it was suspending the custodial mother's ongoing support, without notice of how the custodial mother might reasonably contest the decision.

Recommendation 9, however, is aimed not at the availability of review for the decision, but at how CSSD decided to implement its decision. The ombudsman is concerned that CSSD believed it was appropriate to recoup the overpayment by suspending 100percent of the custodial parent's ongoing support for several months. As discussed in the finding for Allegation 7, this is not appropriate. Again, when a non-custodial parent falls into arrears, there is a limit on how much CSSD can withhold from wages to cover the arrears. This limit is intended to avoid the financial destruction of the obligor. CSSD needs similar limits when recovering overpayments from a child's ongoing support. CSSD's mission is to provide support for children, and this mission is not being accomplished

when CSSD itself cuts off the support for several months, merely to recover a state debt as fast as possible.

The agency response partially satisfies the ombudsman's recommendation.

> ***Recommendation 10: CSSD should create a CSSD policy for addressing errors that occurred because of the prior DPA/CSSD interface problems.***

Several of the problems with the custodial mother's account originated with "interface problems" between DPA and CSSD. The interface problems have apparently been rectified, but other support cases probably have similar historical errors awaiting discovery. It is highly unlikely that the custodial mother's account is unique in having time bombs awaiting an audit.

If CSSD had adequate resources, the ombudsman would recommend that CSSD conduct a manual audit of each account where a custodial parent received ATAP in 2000-2001. The ombudsman doubts that CSSD has such resources. Instead, CSSD will probably discover overpayments and other problems on a more or less random basis, when an account happens to be audited or some other event draws attention to the account history. CSSD needs a policy on how it will handle overpayments caused by interface problems. The apparent current policy – suspending the custodial parent's ongoing support as soon as the audit is complete – is not satisfactory.

CSSD should consider which overpayments should be recouped, and which amounts should be waived because the error was not reasonably preventable by the custodial parent. Technically speaking, CSSD is not required to consider fault – the numbers are the same regardless of whose error caused the overpayment – but CSSD is, in these cases, dealing with a vulnerable part of the population: parents and children who have been (or still are) in desperate enough need to qualify for public assistance. It is still fully appropriate for CSSD to expect these individuals to take financial responsibility for their own mistakes; it is another matter for CSSD to expect them to reimburse the State of Alaska for the state's own errors. For example, overpayments that resulted due to DPA's income reporting gap in August 2001 cannot be justly attributed to the parent. CSSD needs a written policy, or regulation, explaining how CSSD will treat these errors when they are discovered, and defining which errors the custodial parent can justly be expected to pay for. CSSD may also wish to include a time limit analogous to the statute of limitations that applies to lawsuits to recover public assistance arrears.

Agency Response: On January 30, 2004, CSSD wrote, "CSED agrees with this finding." On April 7, 2004, Lisa Taylor, CSSD Complaint Resolution Manager, provided clarification of this statement:

> No policy has been drafted, as yet. We are currently working with DPA to determine what their responsibilities are and where those responsibilities stop and ours start. Our accounting manager is working with DPA staff to find common ground and build from there. The communication has only just begun. A policy such as this is something for the far future.

Ombudsman Comments on Agency Response: It is useful for CSSD and DPA to communicate on this issue. In the meantime, the ombudsman suggests the following starting points, and recommends that CSSD adopt them. These policies would provide CSSD with a way to address interface-related problems as they surface during audits or other case reviews.

> ***Recommendation 10A: If DPA accounted for the erroneously disbursed support payment by counting it as income, or recouping an overpayment of ATAP benefits, then CSSD should not seek recoupment. CSSD already follows this policy.***
>
> ***Recommendation 10B: If an erroneously disbursed child support payment did not result in an overpayment of ATAP benefits, then CSSD should not seek to recoup the payment.***

In short, if CSSD made the error (mistaken disbursement), and the error did not actually harm DPA by causing an ATAP overpayment, then CSSD should forgive and forget, rather than extracting the money from the custodial parent several years later.

This also includes cases under the DPA "retrospective reporting" system where the custodial parent closed off ATAP and therefore was not required to file a monthly report for the income/support. In those cases, the payment erroneously disbursed by CSSD did not affect the amount of ATAP benefits provided.

Finally, this recommendation also covers anomalies generated by DPA's change from retrospective to prospective income reporting in August and September 2001.

Technically, the assigned child support is money owed to the state, regardless of whether CSSD disbursed it by mistake due to the DPA/CSSD interface problems. Realistically, CSSD sent these families checks, and the recipients were generally in a poor position to somehow realize that they were supposed to send back CSSD's own checks. This is even more the case when DPA fell into a pattern of treating the CSSD disbursements like other unearned income, rather than collecting the money as assigned child support. Therefore, the ombudsman recommends that CSSD write off these amounts when the family did not actually reap additional ATAP benefits from the error.

Agency Response: CSSD stated that it agreed with the additional recommendations, 10A and 10B, and confirmed that CSSD's current practice already matches Recommendation 10A. Director John Mallonee then explained what CSSD's agreement apparently means:

> We're currently working with the Attorney General's office to finalize an overpayment policy. Both these issues will be addressed in that policy. We will also ensure that this information, and how we're to handle cases like this, is very clear with our accounting staff while we are working to finalize the policy.
>
> CSSD and DPA have had many conversations and several meetings over the last year about a range of topics that impact both our agencies. We have made vast improvements in the communication between the two

> agencies and we have resolved some long-standing problems. One of the items that came from some of our recent communications is a flow chart that distinguishes CSSD's and DPA's responsibilities with regard to recoupment of overpayments to custodial parents. This information is pertinent to this case and I have attached it for your review. This flow chart will be included in CSSD's finalized policy.[94]

The flow chart referenced by CSSD is attached to the ombudsman report as Appendix A.

Ombudsman Comments on Agency Response: This response is little more than a reiteration of CSSD's initial response to the ombudsman's preliminary report. CSSD previously responded that the agencies were communicating about developing a policy. As of August 2004, the date of CSSD's second response, CSSD states that it is developing a policy.

The flow chart referenced by CSSD in its response to Recommendations 10A and 10B provides for a process to decide whether DPA or CSSD will recoup an overpayment. The flow chart contains absolutely no provision for forgiving any of the overpayments generated by CSSD disbursement errors, as recommended in Recommendation 10B. In other words, there is no indication that CSSD is actually implementing Recommendation 10B. CSSD's agreement with the recommendation is purely theoretical, and as long as CSSD's actions do nothing to make the theory into practice, the ombudsman regards CSSD's "agreement" as meaningless.[95]

Although CSSD accepted Recommendation 10A, because it reflected existing CSSD practice, CSSD ignored Recommendation 10B.

FINDING OF RECORD

As stated above, under 21 AAC 20.210, investigation of a complaint with multiple allegations that results in some allegations being found *justified* and some *not supported* or *indeterminate* results in a finding of *partially justified* for the complaint taken as a whole.

The portion of the complaint regarding CSSD enforcement of the custodial mother's child support case is found ***partially justified***.

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[94] Letter from CSSD Director John Mallonee to Ombudsman Linda Lord-Jenkins, August 17, 2004.

[95] Further, actual implementation of Recommendation 10B would involve considering whether to apply the policy to the custodial mother's case. If applied to the custodial mother, Recommendation 10B would result in CSSD refunding some of the money it recouped from the custodial mother. CSSD's disbursement to the custodial mother in September 2000 would fall into the category discussed in Recommendation 10B, of payments disbursed by CSSD where DPA, in turn, did not provide a mechanism to report and count the disbursements as income. The August 2001 child support payment was sent to the custodial mother directly from Wyoming, rather than through CSSD, so Recommendation 10B technically would not cover that payment. The situation, however, is similar in that DPA apparently had been accepting the client's retention of child support, provided that the client reported it to DPA as income; but the August 2001 change in income reporting format resulted in a month of unreported (and unreportable) income for all ATAP recipients at that time.

The allegations regarding CSSD's audit of the the custodial mother's account, and subsequent suspension of ongoing support, are found ***justified***.

The complaint as a whole is closed as ***partially justified***. It is considered ***partially rectified***, because CSSD partially implemented the recommendations. CSSD implemented Recommendation 1, indicated agreement with Recommendation 2, and has attempted to implement Recommendation 3. CSSD fully implemented Recommendations 4 and 4A. However, CSSD only partially implemented Recommendations 8 and 10. Recommendation 10A matched existing agency practice. CSSD did not implement Recommendations 5, 6, 7, 9, and 10B.