

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

IN THE MATTER OF:)
)
 E. B.) OAH No. 09-0693-CSS
) CSSD No. 001158845
_____)

DECISION AND ORDER

I. Introduction

The obligor, E. B., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on December 11, 2009. The Obligee child is N., who is two years of age.

The formal hearing was held on January 21, 2010. Mr. B. appeared in person; the custodian, A. A. K., participated by telephone. Jeannette Ongaro, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 28, 2010.

Based on the record and after careful consideration, Mr. B.’s child support is set at \$313 per month, effective April 1, 2009, subject to Ms. K.’s withdrawal from services.

II. Facts

A. History

Ms. K. applied for child support services on N.’s behalf in April 2009.¹ On October 1, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. B.² He requested an administrative review but did not provide income information.³ On December 11, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. B.’s ongoing child support at \$661 per month, with arrears of \$5,949 for the period from April 2009 through December 2009.⁴ Mr. B. appealed on December 21, 2009, asserting he does not make the same amount of money as he used to because he no longer works in construction.⁵

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 5.
⁵ Exh. 5.

B. Material Facts

Mr. B. previously owned a small home construction company with a partner for many years but they dissolved the business in 2008 because the costs associated with running the business were getting too high.

Mr. B. is currently self-employed as a taxi driver working 12-hour shifts for six days per week. He testified he earned between \$18,000-\$20,000 in 2009 after paying his taxi driving expenses that consist of a lease payment of \$85 per day plus gasoline.

Mr. B. has a younger child living with him named D., who is about thirteen years old. Mr. B. was granted custody of D. in a divorce proceeding in 2001.⁶ Mr. B. has regular monthly expenses that total about \$1,915 per month: \$600 for the mortgage; \$350 for space rent; \$300-400 for food; \$70-80 for natural gas; \$100 for electricity; \$50 for the Internet; \$85 for two cell phones; \$200 for vehicle insurance; and \$50 for personal care items. He does not have credit card bills or any unpaid medical bills. Mr. B. drives a 1997 Honda Civic as his personal car and has two older vehicles that do not run. D. is part Alaska Native and qualifies for medical care at the Alaska Native Medical Center.

Ms. K. is a single mom who is supported primarily by public assistance and N.'s Social Security benefits. N. is legally blind and is significantly delayed in her motor functions. Ms. K. pays \$495 per month for rent in addition to \$100 for utilities, \$5 for a Lifeline cell phone, \$80 for cable and \$75 for personal care items. She does not have a vehicle so she relies on her mother or Mr. B. for transportation. When neither is available, she uses the People Mover bus system.

CSSD indicated in the hearing that Ms. K. withdrew from CSSD services on January 14, 2010.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁷ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. A parent who supports an older child in the home is entitled to an additional

⁶ See copy of court order dated July 9, 2001, filed by Mr. B. on January 26, 2010.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

deduction.⁸ The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.⁹

As the person who filed the appeal in this case, Mr. B. has the burden of proving by a preponderance of the evidence that the child support amount in CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.¹⁰

CSSD calculated Mr. B.'s child support obligation at \$661 per month, based on an income figure of \$48,547.20.¹¹ CSSD obtained this amount from occupational employment statistics published by the Alaska Department of Labor and Workforce Development for construction laborers.¹²

Mr. B. has not worked in the construction field since 2008, so his actual income should be used in the child support calculation. It is typically next to impossible to determine with specificity the annual income of taxi drivers because all of their transactions are done in cash and they do not keep verifiable records. In cases such as this, and with obligors in other fields who are not able to document their income, CSSD has occasionally used an obligor's monthly expenses to estimate his or her annual income, reasoning that a person who pays out a certain amount of money every month obviously has to first receive the income to make the payments. This is a reasonable method and it is appropriate in Mr. B.'s case.

Mr. B. testified that he pays regular monthly bills that total just under \$2,000. Concluding that he earns that income every month to pay these bills, his income should be estimated at \$2,000 per month, or \$24,000 per year. Because this is the amount he brings home on a monthly basis, federal taxes should not be deducted from this figure. Inserting this income into CSSD's calculator results in a child support amount of \$313 per month.¹³ This support amount includes a deduction of supporting a prior child of \$391 per month.¹⁴

Mr. B. will be obligated for support of \$313 per month effective April 1, 2009, and ongoing. In the event Ms. K. has, indeed, withdrawn from services, CSSD is authorized to

⁸ Civil Rule 90.3(a)(1)(C).

⁹ *Id.*

¹⁰ 15 AAC 05.030(h).

¹¹ Exh. 5 at pg. 9.

¹² *Id.*

¹³ Attachment A.

¹⁴ The calculation to determine the amount of the prior child deduction is shown in Attachment B.

suspend the ongoing support obligation based on that withdrawal. However, the child support order will remain on CSSD's books so that Mr. B.'s child support obligation can be reinstated in the event Ms. K. once again applies for CSSD services.

IV. Conclusion

Mr. B. met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Mr. B. is no longer working in the construction field, so his income must be estimated from his current job as a taxi driver. It is more likely than not that he earns sufficient income from driving taxi to pay his regular bills of \$2,000 per month. Also, Mr. B. is entitled to a deduction for supporting a prior child in the home. Taking all of this evidence into consideration, Mr. B.'s child support is correctly calculated at \$313 per month. This figure should be adopted.

V. Child Support Order

- Mr. B. is liable for child support for N. in the amount of \$313 per month, effective April 1, 2009 and ongoing, subject to Ms. K.'s withdrawal from services;
- All other provisions of the December 11, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 17th day of February, 2010.

By: *Signed* _____
Kay L. Howard
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 8th day of March, 2010.

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

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