

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

IN THE MATTER OF:)

L. P.)

OAH No. 10-0026-CSS

CSSD No. 001159276

DECISION AND ORDER

I. Introduction

The obligor, L. P., appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on December 30, 2009. The Obligee child is M., who turned 18 years of age in November 2009.

The hearing was held on February 11, 2010. Ms. P. appeared by telephone. In this foster care case, the custodian is the State of Alaska. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on March 18, 2010.

Based on the record as a whole and after careful consideration, Ms. P. is liable for supporting M. as of December 2008 because he began receiving foster care services at that time. However, Ms. P.'s child support amount has been adjusted to \$83 for December 2008, and \$127 per month, effective January 2009 and ongoing, pursuant to the third party custody provisions of Civil Rule 90.3(i).

II. Facts

A. History

M. was placed in nonfederal foster care in December 2008.¹ On October 30, 2009, CSSD served an Administrative Child Support and Medical Support Order on Ms. P.² She requested an administrative review and provided income information.³ Following the administrative review, CSSD issued an Amended Administrative Child Support and Medical Support Order on December 30, 2009, that set Ms. P.'s ongoing child support at \$507 per month,

¹ Post-hearing Brief at pg. 1.

² Exh. 3.

³ Exhs. 2, 4.

effective January 1, 2010, with arrears of \$2,427 for the period from December 2008 through December 2009.⁴ On January 13, 2010, Ms. P. filed an appeal and requested a formal hearing.⁵

B. Material Facts

Ms. P. has typically been employed doing medical office support such as billing. Her most recent employer was No Name Hospital, where she started work in November 2008. In April 2009, Ms. P. travelled to New Jersey to visit her ailing mother. Her intent was to return to Anchorage in May 2009, but Ms. P. had a heart attack during the trip and was forced to remain there while she recovered. She was released to travel and return to work in June 2009 but Ms. P. had not worked long enough to acquire job protection through family medical leave. The record is not clear whether it was Ms. P. or her employer who initiated a change in her work status, but upon her return to Alaska she became an “on-call” employee and subsequently was rarely, if ever, called for work.⁶ Since then, Ms. P. has applied for at least 20 jobs in her field and for any job she believes may be appropriate for her.⁷ At the time of the hearing she was under consideration for a position at a local medical facility.

Ms. P. has a younger child in the home: A., who is 7 years old. She and A. live with a friend of hers who is helping support them financially. In addition, Ms. P.’s father has indicated he plans to help her with the unpaid medical expenses of \$6,000 that remain from her heart attack in New Jersey.

The obligee, M., was taken into state custody in December 2008 and is currently incarcerated at the M. Y. F. in Anchorage. The expected date of his release is unknown. Ms. P. has been required to provide clothing for M. but was not able to provide receipts for those items. She estimated the total amount was \$220 for three pairs of jeans and five shirts.⁸

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ This obligation begins when the child is born.¹⁰ By regulation, CSSD collects support from the

⁴ Exh. 6.

⁵ Exh. 7.

⁶ See Ms. P.’s documents submitted on March 3, 2010, at pg. 3.

⁷ See *id.* at pgs. 7-14.

⁸ See Ms. P.’s documents submitted on March 3, 2010, at pg. 2.

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), so long as the arrears time period does not exceed six years.¹¹ M. was incarcerated in December 2008 and is considered to be receiving nonfederal (State of Alaska) foster care. Thus, December 2008 is the first month for which Ms. P. is liable for paying support for M. through CSSD.

The person who files the appeal, in this case, Ms. P., has the burden of proving by a preponderance of the evidence that the child support amount established in CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.¹²

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." When the state takes custody of a child, the parent's child support is calculated differently if the parent has other children in the home.¹³ In that situation, the parent's support obligation is determined for all of his or her children, then apportioned equally depending on how many children are in custody.¹⁴ Thus, in Ms. P.'s case, her support obligation would be calculated for two children, then divided by one-half to ascertain the amount she must pay for M.'s support.

CSSD initially calculated Ms. P.'s child support amount at \$123 for December 2008, \$192 per month for 2009 and \$507 per month for 2010 and ongoing.¹⁵ The first two calculations were based on Ms. P.'s actual income for each year at issue.¹⁶ The final amount of \$507 per month was calculated from imputed annual earnings of \$35,713.60, which CSSD determined by multiplying \$17.17 per hour times 2,080 hours, or, full-time employment.¹⁷ None of these calculations took Ms. P.'s other child, A., into consideration; apparently CSSD was not aware Ms. P. had another child.

After the hearing, CSSD was directed to revise its calculations to reflect the fact that Ms. P. is supporting another child in the home. CSSD utilized Ms. P.'s actual income for 2008 and 2009 to calculate her child support. For 2008, her support obligation for two children is \$166 per

11 15 AAC 125.105(a)(1)-(2).

12 15 AAC 05.030(h).

13 Civil Rule 90.3(i).

14 Civil Rule 90.3(i)(1).

15 Exh. 6 at pgs. 6-8.

16 Exh. 6 at pgs. 6-7.

17 See Exh. 6 at pgs. 4 & 8.

month, which, when divided by two, equals \$83 per month for one child in state custody.¹⁸ Likewise, for 2009, Ms. P.'s support obligation for two children is \$255 per month, or \$127 per month for one child in state custody.¹⁹ Because Ms. P. remains temporarily unemployed in 2010, her support amount for 2009 should be carried into the current year instead of being calculated from full-time potential earnings, which at this juncture, appear to be unattainable for Ms. P. in 2010.²⁰

CSSD's calculation of Ms. P.'s child support is now correct. One issue remains to be addressed: whether, because of Ms. P.'s unemployment, the child support figures should be varied based on financial hardship.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied." Civil Rule 90.3(c). A finding that "unusual circumstances" exist in a particular case may be sufficient to establish "good cause" for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . .

[21]

Based on all the evidence, this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. It has not been proven by clear and convincing evidence that manifest injustice would result if Ms. P. were required to pay the full arrears in this case. Granted Ms. P.'s heart attack resulted in the loss of her regular source of income, but the record does not establish that Ms. P. will remain unemployed. Rather, she has a marketable skill set in

¹⁸ Exh. 8 at pgs. 4 & 5.

¹⁹ Exh. 8 at pgs. 6 & 7.

²⁰ It is unlikely that Ms. P.'s child support would have been set at the \$507 per month amount initially calculated by CSSD based on imputed earnings. CSSD did not first make a determination that Ms. P. was voluntarily and unreasonably unemployed or underemployed, which is required to impute income to an obligor parent. *See* Civil Rule 90.3, Commentary III.C. Also, the record suggests that Ms. P. has been pursuing reemployment aggressively. This would render the "voluntary" and "unreasonable" descriptions of her unemployment inapplicable.

²¹ Civil Rule 90.3(c)(1).

the medical billing field and she should be able to obtain employment in the future. This probably gives Ms. P. little comfort, but she and her son A. are being supported through the generosity of her friend, so there appears to be little chance that she is in danger of losing their housing or any other physical necessities of living. Ms. P. may be unable to pay the monthly support amount while she is job hunting, but she should be able to begin paying support for M. when she starts working again.

IV. Conclusion

Ms. P. met her burden of proving that the Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Her child support is now correctly calculated at \$83 for December 2008, and \$127 per month from January 2009 through April 2010, and ongoing. Ms. P. did not prove by clear and convincing evidence that there is good cause in this case to reduce her child support arrears based on a financial hardship.

V. Child Support Order

- Ms. P. is liable for child support for M. in the amount of \$83 for December 2008; and \$127 per month from January 2009 through April 2010, and ongoing;
- All other provisions of CSSD's December 30, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 2nd day of April, 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 19th day of April, 2010.

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

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