

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

IN THE MATTER OF:)
)
S. L.) OAH No. 10-0260-CSS
) CSSD No. 001159168
_____)

DECISION AND ORDER

I. Introduction

The obligor, S. L., appeals an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in this case on April 29, 2010. The obligee child is M. W. who is one year old. The custodial parent is A. W.

The formal hearing was held on June 8, 2010. CSSD was represented by Child Support Specialist Erinn Brian, who appeared in person. Ms. W. also appeared in person, and Mr. L. appeared by telephone. The record was held open until June 11, 2010, to allow the parties to submit additional information.

After the proposed decision was issued, a Proposal for Action was received from Ms. W., based on her Proposal for Action, the Commissioner's authorized designee remanded this case for additional findings concerning "the child support amount from May 1, 2009 to March 2010.

Based on the evidence in the record and the testimony at the hearing, Mr. L.'s child support should be set at \$847 per month effective May 1, 2009, and \$604 per month effective March 1, 2010.

II. Facts

A. Background

Ms. W. began receiving public assistance benefits on M.'s behalf in May 2009.¹ As part of her application for public assistance, Ms. W. indicated that Mr. L. is M.'s father.² CSSD established Mr. L.'s paternity of the child on October 23, 2009,³ then issued an Administrative Child Support and Medical Support Order on February 19, 2010 setting Mr. L.'s child support

¹ Exhibit 12, page 9.

² Exhibits 1 & 3.

³ Exhibit 4.

obligation at \$438 per month, effective May 1, 2009.⁴ Mr. L. requested an administrative review.⁵ Mr. L. submitted a second Request for Administrative Review with an attached pay stub.⁶ CSSD issued an Amended Administrative Child and Medical Support Order on April 29, 2010, setting Mr. L.'s child support obligation at \$982 per month effective May 1, 2010.⁷ This order also set the amount of arrears from May 1, 2009 through April 30, 2010 at \$11,736.

Mr. L. appealed this decision stating that his employment situation had changed and he was no longer earning as much money.⁸ He also stated that he was starting school.

B. Material Facts

Mr. L. has three children, an older daughter who is 9, a son who is 8, and M.⁹ Ms. W. provides medical insurance for M.¹⁰

Mr. L. had been working for the U.S. D. C. and as a personal care assistant (PCA) for C. H. C.. In 2009, he earned a total of \$69,057.21.¹¹ His contract with the D. C. ended. His work as a PCA is dependent on having a client who needs his services, and he is not currently working in that capacity. Mr. L. recently started a two year degree program at the University of Alaska, Anchorage where he is a full time student. He expects to be able to work as a PCA 20 – 30 hours per week earning \$12 per hour. His tuition is paid for by the military and he also receives \$2,000 per month as a housing allowance.

Mr. L. has had child support payments withheld from his paychecks for his older daughter and his son. CSSD was able to verify that payments continue to be made from paychecks and unemployment benefits for his older daughter,¹² but could not verify payments on behalf of his son, who lives in Texas. Mr. L. testified that he sends money directly to his son's mother when he can, but that he is not currently making payments.

4 Exhibit 5.
5 Exhibit 6.
6 Exhibit 10.
7 Exhibit 12.
8 Exhibit 13.
9 The facts stated here are based on Mr. L.'s testimony unless otherwise indicated.
10 Exhibit 8, page 8.
11 Exhibit 14.
12 CSSD Submission dated June 8, 2010.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹³ 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," less certain mandatory deductions such as taxes and Social Security. An obligor is also entitled to credit for child support payments arising from a prior relationship if those payments are required by a court or administrative order and if the payments are actually made.¹⁴ As the person who filed the appeal, Mr. L. has the burden of proving by a preponderance of the evidence that the child support amount in CSSD's Amended Administrative Child and Medical Support Order is incorrect.¹⁵

CSSD calculated Mr. L.'s support obligation of \$982 per month based on his prior earnings history.¹⁶ This calculation did not take into account the fact that Mr. L.'s income has changed and also the fact that he is entitled to a deduction for payments made on behalf of an older child. Mr. L. earned \$69,057.21 in 2009. His 2009 income, along with the deduction for paying child support for his older daughter, results in a child support obligation of \$847 per month.¹⁷

Mr. L. has lost his job with the F. C. and has gone back to school. Mr. L. testified that he was confident of being able to find employment as a PCA, and he anticipated earning \$12 per hour and working 20 - 30 hours per week. Using 25 hours as a reasonable estimate of the amount of time he will work results in annual wages of \$15,600.¹⁸ Mr. L. will also receive \$2,000 per month, or \$24,000 per year from his housing allowance. When these numbers are inserted into CSSD's online child support calculator, along with a Permanent Fund Dividend check and credit for child support payments made on behalf of Mr. L.'s older daughter, the resulting child support obligation is \$604 per month for one child.¹⁹

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ Civil Rule 90.3(a)(1)(C).

¹⁵ 15 AAC 05.030(h).

¹⁶ Exhibit 12, page 4.

¹⁷ Attachment A. The online child support calculator can be found at www.childsupport.alaska.gov.

¹⁸ 25 hours x 52 weeks per year x \$12 = \$15,600.

¹⁹ Attachment B. This calculation does not reflect the adjustment for the insurance premiums Ms. W. pays for M. CSSD's caseworker will make any necessary adjustments after this decision is issued.

IV. Conclusion

Mr. L. has met his burden of proving that CSSD's Amended Administrative Child and Medical Support Order was incorrect. He had been earning over \$69,000 per year. At this time, he can reasonably be expected to earn \$15,600 per year while he completes his education. In addition, he will receive a military housing allowance of \$24,000 per year. Based on the evidence in this matter, the correct calculation of Mr. L.'s child support obligation for M. is \$847 per month through February of 2010 and \$604 per month beginning in March of 2009. These amounts should be adopted.

V. Child Support Order

- Mr. L. is liable for child support for M. in the amount of \$847 per month effective May 1, 2009.
- Mr. L. is liable for child support for M. in the amount of \$604 per month effective March 1, 2010.
- All other provisions of the April 29, 2010, Amended Administrative Child and Medical Support Order remain in full force and effect.

DATED this 13th day of July, 2010.

By: Signed _____
Jeffrey A. Friedman
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 26th day of July, 2010.

By: Signed _____
Signature
Jerry Burnett _____
Name
Deputy Commissioner _____
Title

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