

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

IN THE MATTER OF:)

A.-G. B.)

OAH No. 10-0277-CSS

CSSD Nos. 01161654/001161655

DECISION AND ORDER

I. Introduction

The obligor, A.-G. B., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on May 7, 2010. The obligee child is D., 2½ years of age.

The formal hearing was held on June 24, 2010. Ms. B. appeared in person. This is a foster care case so the custodian of record is the State of Alaska. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on June 24, 2010.

Based on the record and after careful consideration, Ms. B.'s child support is set at \$50 per month for 2008; \$122 per month for January 2009 through August 2009; \$50 per month for September 2009 through December 2009; and \$50 per month for January 2010 through August 2010, and ongoing. Ms. B. prevails on her primary appeal issue that her support should be set at \$50 per month after her return to jail in August 2009.

II. Facts

A. History

This is a foster care case. Benefits began to be paid for D.'s care in January 2008.¹ On March 31, 2010, CSSD served an Administrative Child Support and Medical Support Order on Ms. B.² She requested an administrative review.³ On May 7, 2010, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Ms. B.'s ongoing child support at \$50 per month, with arrears of \$2,329 for the period from January 2008 through May 2010.⁴ Ms. B. appealed on May 19, 2010, asserting that the calculation for 2009 should be reduced

¹ Exh. 4 at pg. 9.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 4.

because she did not work the entire year, and that she will not be eligible for a PFD until 2011.⁵ Prior to the hearing, CSSD removed the PFD from Ms. B.'s child support calculation for 2010; the resulting support amount is \$50 per month instead of \$53 per month.⁶

B. Material Facts

Ms. B. was arrested in August 2007. The State of Alaska subsequently took custody of D. and foster care payments were initiated on the child's behalf beginning in January 2008.⁷ Since her incarceration began, Ms. B. has completed a 90-day treatment program and has been employed intermittently while living in a halfway house.⁸ For a period of about six months in 2009, she was employed in the community and earned a total of \$6,006.06.⁹ She also receives occasional Native dividends, but in immaterial amounts.

Ms. B. relapsed and was returned to jail on August 20, 2009. After her return, she worked in the facility's kitchen, where she earned up to 65¢ per hour. She is currently back at the halfway house again and is looking for employment. Ms. B. estimated that upon her release she will be facing bills totaling approximately \$20,000 from the court-ordered fine and the bill from her time in the treatment center.

Ms. B.'s child support calculations for 2008 and 2009 do not include PFDs in the income section of the worksheets, but the 2010 calculation does.¹⁰ CSSD acknowledged in its Pre-Hearing Brief that Ms. B. is not currently entitled to a PFD and so corrected the 2010 calculation to the statutory minimum amount of \$50 per month in its Pre-Hearing Brief.¹¹

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹² Civil Rule 90.3(a)(1) provides that an obligor parent's child support is to be calculated from his or her "total income from all sources." As the person who filed the appeal in this case, Ms. B. has the burden of proving by a preponderance of the evidence that the child support amounts

⁵ Exh. 5.

⁶ Exh. 6.

⁷ Exh. 4 at pg. 9.

⁸ B. testimony.

⁹ *Id.*

¹⁰ *See* Exh. 4 at pgs. 6-8.

¹¹ Exh. 6.

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

established in CSSD's Amended Administrative Child Support and Medical Support Order are incorrect.¹³

CSSD calculated Ms. B.'s 2008 and 2010 child support amounts at \$50 per month, based on her incarceration. Ms. B. is not challenging those figures. Rather, she objects to having a support obligation of \$122 per month for 2009, given that she worked only a few months during the year and then returned to jail on August 20, 2009.

CSSD calculated Ms. B.'s 2009 child support at \$122 per month for every month in 2009. The agency's position is that Ms. B.'s 2009 child support was calculated correctly, based on the total income she earned before she was returned to jail in August 2009. CSSD used this income amount based on the direction of Civil Rule 90.3(a), which specifies that child support should be calculated from an obligor's annual income.

CSSD is correct, of course, in that child support is to be calculated from annual income figures. However, it may not always be correct to apply the child support amount calculated from an obligor's annual income to all the time periods at issue in a particular year. A prime example is the situation in which an obligor is employed and earning income but then becomes incarcerated later in the year on a long-term basis. Beginning with the month the obligor is incarcerated, he or she no longer has access to earned income and should have a minimum order of \$50 per month unless there are other factors to be considered.¹⁴ This has long been CSSD's standard practice and it is consistent with the commentary to Civil Rule 90.3, which states that a parent's child support obligation is to be calculated from "the income which will be earned when the support is to be paid."¹⁵

In this case, Ms. B. was placed in a halfway house and was employed in the beginning of 2009. She was returned to jail on August 20, 2009. Once she was re-incarcerated, she no longer had access to the income she earned earlier in the year. To apply the child support amount calculated from her income earned earlier in the year was contrary to Civil Rule 90.3. As of September 2009, Ms. B.'s child support should return to \$50 per month. Now that she is back at the halfway house and looking for work, she should contact CSSD for a modification review as soon as she becomes employed.

¹³ 15 AAC 05.030(h).

¹⁴ In a recent prisoner case, an obligor's child support was calculated from Native corporation dividends because he received them regardless of whether he was incarcerated. *See IMO R.P.*, OAH No. 09-0681 at 3 (2010).

IV. Conclusion

Ms. B. met her burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Ms. B.'s child support is thus set at \$50 per month for 2008; \$122 per month for January 2009 through August 2009; \$50 per month for September 2009 through December 2009; and \$50 per month for January 2010 through August 2010, and ongoing. These figures should be adopted.

V. Child Support Order

- Ms. B. is liable for child support for D. in the amount of \$50 per month for 2008; \$122 per month for January 2009 through August 2009; \$50 per month for September 2009 through December 2009; and \$50 per month for January 2010 through August 2010, and ongoing.
- Ms. B. should contact CSSD upon her release and/or re-employment in order to request a modification review;
- All other provisions of the May 7, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 19th day of August, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁵ Civil Rule 90.3, Commentary III.E.

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 7th day of September, 2010.

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

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