

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

IN THE MATTER OF:)

K. O. O.)

OAH No. 10-0338-CSS

CSSD No. 001161839

DECISION AND ORDER

I. Introduction

The obligor, K. O. O., appeals an Amended Administrative Child and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on June 9, 2010.

The Obligee child is J., who is not yet age two. The custodian is K. C.

The formal hearing was held on August 4, 2010. Mr. O. and Child Support Specialist Erinn Brian participated in person; Ms. C. participated by phone. The record closed on August 4, 2010.

Based on the record and after careful consideration, CSSD’s June 9, 2010, Amended Administrative Child Support and Medical Support Order is affirmed, with one exception in that the child support amount for January 2010 through April 2010 is set at \$95 per month, the same as for 2009. As a result, Mr. O. is liable for child support of \$95 per month for September 2009 through April 2010, and \$255 per month, effective May 1, 2010 and ongoing.

II. Facts

A. History

Ms. C. applied for services on behalf of J. in September 2009. On April 17, 2010, CSSD served an Administrative Child Support and Medical Support Order on Mr. O.¹ He requested an administrative review on April 28, 2010.² On June 9, 2010, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. O.’s ongoing child support at \$255 per month effective July 1, 2010, with arrears of \$1,910 for the period from September 2009

¹ Exh. 2.

² Exh. 3.

through June 2010.³ Mr. O. appealed on June 23, 2010, asserting that he has attempted to support J. but that Ms. C. refused the support and will not let him see his daughter.⁴

B. Material Facts

At hearing Mr. O. narrowed the scope of his appeal to the amount of arrears. Through his sworn testimony it was established that paternity is not in dispute nor is the amount of ongoing support in dispute. Rather, Mr. O. believes he should receive a credit for in-kind support he offered, but Ms. C. refused, and he believes the amount of child support ordered before April 2010 is “not fair.” He reasoned that he should not be charged with arrears because he did not know he owed child support until he was served with the April 2010 Administrative Child Support and Medical Support Order. Mr. O. testified that had he been aware of his obligation he would have tried to comply. CSSD mailed Mr. O. notice of the request for services but Mr. O. had moved and it took the mail a bit to catch up to him.

Mr. O. is presently unemployed and is moving out of state to work with his father and eventually take over his business. He expects to earn between \$7.50 and \$7.80 per hour.⁵ His earnings history as reported by the Alaska Department of Labor reveals that in 2007 he earned \$5,696.56, in 2008 he earned \$10,599.06, and in 2009 Mr. O. earned \$4,723.96. Mr. O. graduated from high school in 2007.⁶ He regularly worked two part time jobs but has not worked a full-time job.⁷

Regarding Mr. O.’s request for a direct credit or in-kind credit, Ms. C. agreed that Mr. O. had purchased a few boxes of diapers and a few outfits but that it was not intended to be child support. Mr. O. did not have any receipts nor could he estimate a dollar amount for the credit that he seeks.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁸ This obligation begins when the child is born, but by regulation, CSSD only collects support from the date the custodial parent requested child support services, or the date public assistance

³ Exh. 5.
⁴ Exh. 6; Exh. 7.
⁵ O. Testimony.
⁶ O. Testimony.
⁷ O. Testimony; Exh. 8.

or foster care was initiated on behalf of the child(ren).⁹ In this case, Ms. C. requested services in September 2009, so that is when Mr. O.'s obligation to pay support through CSSD begins.

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

Civil Rule 90.3(a)(1) provides that an Obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions for items such as taxes and Social Security. Mr. O. accepts CSSD's child support amount effective May 1, 2010 and ongoing. Upon review, it is apparent that CSSD's calculation for that period from September 2009 through April 2010 should be reexamined. CSSD correctly calculated Mr. O.'s 2009 child support obligation to be \$95 per month using his actual income for that year.¹¹ Commencing January 2010, CSSD set Mr. O.'s child support at \$255 per month, which was calculated from what is essentially an imputed income figure of \$17,425.¹² CSSD indicated that this income amount for 2010 was based on its conclusion that there was nothing preventing Mr. O. "from obtaining and maintain full time employment."¹³

When CSSD calculates an ongoing support obligation, its regulations state that the agency is to use the obligor parent's "total annual income that the parent is likely to earn or receive when the child support is to be paid."¹⁴ In this process, CSSD must use "the best available information," which, if current information is not at hand, may include "the minimum wage for the area in which the parent physically resides."¹⁵ In Mr. O.'s case, CSSD used \$7.75 per hour for full-time work (2080 hours) to calculate his child support obligation effective January 2010 and ongoing calculation.¹⁶ The wage rate of \$7.75 per hour at 2080 hours per year technically may be allowed by CSSD's regulations, but it is not the "best available information" nor is it the most realistic when compared to Mr. O.'s actual established earnings.

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁹ 15 AAC 125.105(a)(1)-(2).

¹⁰ 15 AAC 05.030(h).

¹¹ *See* Exh. 5 at pgs. 4, 5, and 9.

¹² Exh. 5 at pg. 7.

¹³ *See* Exh. 5 at pg. 9.

¹⁴ 15 AAC 125.050(c).

¹⁵ 15 AAC 125.050(c)(8).

¹⁶ Exh. 5 at pgs. 7 and 9.

Department of Labor records reflect that the most Mr. O. has earned in the three years following his graduation from high school in 2007 was \$10,599.06 in 2008.¹⁷ This is over \$7,000 less than the income CSSD has concluded Mr. O. is capable of earning. Additionally, Mr. O.'s testimony as corroborated by his Department of Labor records reveals that he often worked two part-time jobs. Based on the entire record in this appeal, there is virtually no evidence to suggest that Mr. O. would be working full time in the first four months of 2010. Therefore, referring back to 15 AAC 125.050(c), there is insufficient evidence that Mr. O. was "likely to earn or receive" income in excess of his 2009 earnings during the period in question.¹⁸ Similarly, there would be scant justification for using \$7.75 per hour times 2080 hours because his employment record does not support a finding that he has ever been employed full-time.

In the absence of more information, or of a finding that Mr. O. is voluntarily and unreasonably unemployed, CSSD must use the "best available information," which in this case is Mr. O.'s most recent income. This he earned in 2009, so Mr. O.'s 2009 calculation of \$95 per month should be carried forward through April 2010.

Regarding Mr. O.'s request for credit for direct payments or payments in-kind, CSSD's regulations do provide for credit in limited circumstances not present here.¹⁹ Notably, Mr. O. has no receipts or a dollar amount for the credit he seeks and Ms. C. denies that the payments were intended to be support.

IV. Conclusion

Mr. O.'s obligation to pay child support through CSSD commenced September 2009. The issue is the correct amount of child support under Civil Rule 90.3. Mr. O. proved by a preponderance of the evidence that CSSD incorrectly calculated his child support obligation from January 2010 through April 2010.²⁰ Mr. O. accepts CSSD's child support calculation effective May 1, 2010 and ongoing. Accordingly, Mr. O.'s child support obligation for one child from September 1, 2009 through April 30, 2010 should be \$95 per month and effective May 1, 2010 and ongoing, Mr. O.'s child support obligation should be increased to \$255 per month for one child. These figures should be adopted.

¹⁷ Exh. 8.

¹⁸ Emphasis added.

¹⁹ See 15 AAC 125.465 (Credit for direct payments) and 15 AAC 125.470 (Credit for in-kind and payments in lieu of support).

V. Child Support Order

- Mr. O. is liable for child support in the amount of \$95 per month for September 2009 through April 2010 and \$255 per month commencing May 2010 and ongoing.
- All other provisions of the June 9, 2010, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 9th day of August, 2010.

By: Signed
Rebecca L. Pauli
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 27th day of August, 2010.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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

²⁰ See 15 AAC 05.030(h).