

B. Material Facts

Mr. P. testified⁶ that he is a self-employed barber. He has to pay chair rent to the salon where he works. He also buys his own supplies. He only gets paid when he has a customer, so the amount he earns varies from week to week. Business has been slow at the salon where he works. Mr. P. has looked for other locations where he might earn more money, but so far has not been successful in moving to a better location.

Mr. P. is required to wear an ankle monitor due to a criminal conviction, and is not allowed to travel freely around town. This limits his ability to recruit customers. In addition, he has colon cancer which prevents him from working on some days.

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."⁸ CSSD uses the best information available to determine the parent's total income from all sources for the periods of time in which support is to be paid.⁹ When CSSD is calculating arrears and has no information concerning income in a particular year, it is required to base its calculation on the Male and Female Average Annual Wage Income by Age Group statistics available from the Department of Labor and Workforce Development.¹⁰ When CSSD is calculating arrears and has limited information about a person's income in a particular year, the agency

Will estimate the parent's total income for that year based on the parent's earnings in prior or subsequent years, job skills, training, work history, and education, and the employment available in the area where the parent physically resides or previously resided.^[11]

When CSSD has complete information concerning a parent's earnings, it uses that information to calculate arrears.¹² When calculating ongoing child support, CSSD determines the amount the parent is likely to earn or receive during the time when support is to be paid.¹³

⁶ Unless otherwise stated, the facts found here are from Mr. Price's testimony.

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

⁸ See also 15 AAC 125.020.

⁹ 15 AAC 125.050(a).

¹⁰ 15 AAC 125.050(b)(3)(A). This is the method used for parents who are over 19 years of age and reside in Alaska.

¹¹ 15 AAC 125.050(b)(2).

¹² 15 AAC 125.050(b)(1).

Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁴

CSSD's calculation of Mr. P.'s support obligation for 2008 and 2010 was based on the assumption that Mr. P. would earn \$14.23 per hour full time as a hairdresser.¹⁵ The calculation for 2009 was based on the amount reported in Mr. P.'s 2009 tax return.¹⁶

Mr. P. met his burden of showing that CSSD's calculations for 2008 through 2010 were incorrect. He testified as to how much he typically earns in a year, and it is substantially less than the amount attributed to him by CSSD. He submitted additional information to CSSD, and CSSD included that information in its post hearing brief.

Mr. P.'s self employment income in 2008 was only \$1,866.¹⁷ At this income level, his support obligation would be the minimum allowable amount of \$50 per month.¹⁸ In 2009, Mr. P.'s self employment income was \$3,844.¹⁹ This is the amount reported on Mr. P.'s Schedule C for his 2009 tax return. The calculation includes a deduction for what appears to be straight line depreciation.²⁰ This amount also allows a deduction for meals and entertainment. The meals and entertainment amount – \$170 – is not significant and does not appear to have reduced Mr. P.'s living expenses. Accordingly, it is an allowable business deduction for purposes of calculating child support.

According to the IRS tax tables available at www.irs.gov, the federal tax on Mr. P.'s self employment income would be approximately \$383. His self-employment tax²¹ would be an additional \$588.13, leaving an adjusted annual income for child support purposes of \$2872.87.²² At this income level, Mr. P.'s support obligation would remain at the minimum allowable amount of \$50 per month.

¹³ 15 AAC 125.050(c).

¹⁴ 15 AAC 05.030(h).

¹⁵ Exhibit 8, page 4. This hourly rate was derived from Alaska's Occupational Employment Statistic, but there is no evidence in the record establishing that amount.

¹⁶ Exhibit 8, page 4.

¹⁷ Exhibit 10, page 3.

¹⁸ Civil Rule 90.3(c)(3).

¹⁹ Exhibit 7, page 4.

²⁰ The accelerated component of depreciation is not included when calculating child support, but straight line depreciation is an accepted ordinary business expense. Civil Rule 90.3, Commentary III.B.

²¹ This is the amount a self employed person pays towards social security and Medicare.

²² Income taxes and social security taxes are deducted from a parent's total income. Civil Rule 90.3(a).

Mr. P.'s 2010 income is projected from his current earnings as shown in the records he submitted to CSSD. Through August of 2010, he had income of \$14,224 and expenses of \$7,433.48, leaving a net income for eight months of \$6,790.52.²³ On an annual basis, this equates to \$10,185.78 per year. The federal income tax on this amount is approximately \$1018. The self employment tax is an additional \$1558.42. This results in an adjusted income of \$7,609.36. Based on this income, Mr. P.'s child support obligation for one child would be \$127 per month.²⁴

IV. Conclusion

Mr. P.'s child support obligation should be set at \$50 per month beginning in May of 2008. As of January 1, 2010, his support obligation should increase to \$127 per month. Ms. S. withdrew from services in October of 2009. Mr. P. is reminded that while CSSD's collection of the monthly support is suspended effective November of 2009, he is still obligated to provide support. Both parties should keep accurate records and receipts for child support payments made directly to Ms. P. which can be used to determine if any arrears are owed if either party does apply for services in the future.

V. Child Support Order

- Mr. P. is liable for child support in the amount of \$50 per month for one child effective May 1, 2008 through December 31, 2009;
- Mr. P.'s is liable for child support in the amount of \$127 per month for one child effective January 1, 2010;
- CSSD's collection of support is suspended effective November 1, 2009; and
- All other provisions of the July 7, 2010 Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 13th day of September, 2010.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

²³ Exhibit 11.

²⁴ 20% of \$7,609.36 divided by 12. Civil Rule 90.3(a)(2)(A).

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 4th day of October, 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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