

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

IN THE MATTER OF:)
)
 S. O.) OAH No. 10-0433-CSS
) CSSD No. 001160609
_____)

DECISION AND ORDER

I. Introduction

This is an establishment case based on an application for Native temporary assistance in January of 2009. S. O. has appealed an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The custodial parent of record is R. C. The obligee child is T. O. T. is under two years of age.

A hearing was held on September 14, 2010. Mr. O. and Ms. C. appeared by telephone. CSSD was represented by Child Support Specialist Andrew Rawls. The record was kept open until September 21, 2010 for CSSD to submit supplemental calculations. Ms. C. stated that she would provide CSSD with copies of her payroll information prior to that time.¹

Based on the evidence in this matter, Mr. O.'s child support obligation should be set at \$364 per month, effective June 1, 2010. He is not liable for paying support through CSSD prior to that time because he was a custodial parent through May of 2010.

II. Facts

A. Background

CSSD issued an Administrative Order to Provide Financial and Medical Insurance Information on July 20, 2009.² An Administrative Child Support and Medical Support Order was issued by CSSD on February 10, 2010.³ Both parties requested an administrative review and Mr. O. requested genetic testing.⁴ A Denial of Petition for Genetic Testing was issued on June 9, 2010 for the reason that Mr. O. had previously signed an Affidavit of Paternity.⁵ CSSD

¹ Apparently, this information was not received by CSSD. CSSD's Post Hearing Brief.
² Exhibit 1.
³ Exhibit 3.
⁴ Exhibits 4 & 7.
⁵ Exhibit 9.

issued an Amended Administrative Child Support and Medical Support Order on July 7, 2010.⁶ This order set Mr. O.'s child support obligation at \$359 per month, effective August 1, 2010, with arrears of \$12,653. Mr. O. appealed that decision.⁷

B. Material Facts

Mr. O. testified that he was previously employed in the petroleum industry, and had a job working on the North Slope. He earned approximately \$50,000 per year. He lost his job in July of 2010. He is looking for work in the oil industry as well as for other types of jobs. Ms. C. testified that she started working for her Native village in May of 2010. She earns \$17 per hour, but says she works less than 20 hours per week. The parties have been sharing custody with each parent having custody 50% of the time.

At the hearing, both parents testified that they were living together through May 25, 2010. Mr. O. was absent when he was working on the North Slope, but returned to the family home during his time off. There were also brief periods when the parties were not together because of disagreements, but they were together the majority of the time from T.'s birth until they permanently separated on May 25. Accordingly, any child support obligation would be effective as of June 1, 2010.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁸ 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." This calculation is based on the amount the obligor parent is likely to earn when the payments are made.⁹ The person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁰

At the hearing, CSSD agreed that any child support obligation should be effective on June 1, 2010, which is the month after the parents separated. Because Mr. O. and Ms. C. have shared custody of T., the child support calculation must account for the income of each parent. The first step is to calculate the amount that each one would be obligated to pay assuming the other parent

⁶ Exhibit 12.

⁷ Exhibit 13.

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

⁹ Civil Rule 90.3, Commentary III.E.

¹⁰ 15 AAC 05.030(h).

had primary custody.¹¹ Those amounts are then multiplied by the percentage of time the other parent has physical custody.¹² The parent with the larger resulting amount is the obligor parent. With some exceptions that are not applicable here, that amount is multiplied by 1.5 to determine that parent's child support obligation.¹³

CSSD performed these calculations in its Post Hearing Brief. To calculate total annual income for Mr. O., CSSD used the wages reported to the Alaska Department of Labor and Workforce Development for the first two quarters, plus 20 weeks of unemployment benefits, and a Permanent Fund Dividend check (PFD). For Ms. C., CSSD calculated eight months of pay based on the amount she earned in the second quarter of 2010, and used that figure plus a PFD as her total annual income.¹⁴

CSSD's calculation of Mr. O.'s annual income assumes that he will remain unemployed through the rest of 2010. There is no evidence in this case that Mr. O.'s current unemployment is anything other than a temporary circumstance.¹⁵ He testified that he is actively looking for work, and there is no evidence in the record that he is unlikely to find another job.¹⁶ Thus, his expected annual income should be based on his earning capacity as reflected in the job he held through the first two quarters of 2010. He earned \$26,472.18 in the first half of the year, which equates to an annual income of \$52,944.36. With the addition of a PFD, and subtraction of mandatory deductions such as taxes and Social Security, Mr. O.'s adjusted annual income is expected to be \$42,623.16.¹⁷

There is also a problem with CSSD's proposed calculation of Ms. C.'s annual income. CSSD has used eight months of pay to estimate her earning capacity for the entire year. This results in a lower ability to pay than actually exists. Ms. C. has been working since May, and the amount of her child support should be based on an annualized amount calculated from her current rate of pay. Ms. C. earned \$2,326.75 in two months.¹⁸ This is the equivalent of

11 Civil Rule 90.3(b)(1)(A).

12 Civil Rule 90.3(b)(1)(B).

13 Civil Rule 90.3(b)(1)(C).

14 *See also*, Exhibits 15 & 16 attached to CSSD's Post Hearing Brief.

15 *See In The Matter Of M.J.V.*, OAH No. 09-0181-CSS.

16 If Mr. O.'s next job pays significantly more or less than his last job, or if he remains unemployed for a lengthy period of time, one of the parties may wish to request a modification. Civil Rule 90.3(h).

17 Attachment A.

18 Exhibit 14, page 2.

\$13,960.50 per year. With the addition of a PFD and subtraction of taxes, Ms. C.'s adjusted annual income is expected to be \$13,536.06.¹⁹

Using these income figures and shared custody by both parents results in a child support obligation for Mr. O. of \$364 per month.²⁰

IV. Conclusion

The parties currently have shared custody with each parent having custody of their child approximately 50% of the time. Based on the amounts each parent is likely to earn when child support payments are made, Mr. O. is obligated to pay \$364 per month for one child, effective June 1, 2010. He is not liable for paying support through CSSD prior to that time because he was a custodial parent through May of 2010.

V. Child Support Order

- Mr. O.'s child support obligation is \$364 per month for one child effective June 1, 2010.
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated July 7, 2010, remain in full force and effect.

DATED this 24th day of September, 2010.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

¹⁹ Attachment B.

²⁰ Attachment C.

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 12th 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.]