

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

IN THE MATTER OF:)

R. L. L.)

) OAH No. 10-0548-CSS

) CSSD No. 001162495

DECISION AND ORDER

I. Introduction

The obligor, R. L. L., appeals an Amended Administrative Child and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on September 16, 2010. The obligee child is P., who is 1½ years old. The custodian is K. S.

The formal hearing was held on November 17, 2010. Both Mr. L. and Ms. S. participated by telephone for the hearing. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on November 24, 2010.

Based on the record and after careful consideration, Mr. L.’s child support is set at \$609 per month for September 2009 through December 2009; and \$460 per month for 2010 and ongoing.

II. Facts

A. History

Ms. S. began receiving Medicaid and/or public assistance benefits on P.’s behalf beginning in September 2009.¹ On July 8, 2010, CSSD served an Administrative Child Support and Medical Support Order on Mr. L.² He requested an administrative review and provided paystubs on July 23, 2010.³ On September 16, 2010, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. L.’s ongoing child support at \$452 per month, with arrears of \$6,504 for the period from September 2009 through September 2010.⁴ Mr. L. appealed on October 21, 2010, asserting he has been unemployed since July 2010; he is in the

¹ Pre-Hearing Brief at pg. 1.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

process of filing for 50/50 custody of P.; and he took care of the child, including buying her food, diapers and clothing items, from the date of her birth through January of 2010.⁵

B. Material Facts

Mr. L. and Ms. S. are the parents of P., who was born in early 2009. The parties separated in July or August 2009 and P. remained in the primary custody of her mother. However, when Ms. S. was at work, Ms. S. often had the child during the day at his home and provided P.'s food and diapers when she was there. Mr. L. testified this arrangement essentially stopped in January 2010. Although P. occasionally stayed overnight at her father's, neither party provided documentation of the dates she was there. In any event, Ms. S. stated it was only a "handful" of times and Mr. L. did not dispute her testimony.

Mr. L. has been unemployed since August 24, 2010. He previously worked at J. M. S. as a longshoreman, but the company lost its contract and his employment was terminated in April 2010. After that he worked for R. P. S. as a bus driver at the Anchorage airport. He was laid off from that job as of August 24, 2010. Although he was still unemployed at the time of the hearing, Mr. L. testified that he was constantly looking for work but that he does not get callbacks from the applications he submits to potential employers.

Mr. L.'s 2009 income totaled \$43,867.83.⁶ When the 2009 PFD of \$1,305 is added to his income from earnings, his total income for the year was \$45,172.83.⁷ Inserting this figure into CSSD's online child support calculator⁸ results in a child support amount of \$609 per month for one child for the months of September through December 2009.⁹

In 2010, Mr. L.'s income from J. M. S. and R. P. S. totaled \$16,857.54 through the third quarter of the year.¹⁰ He had received unemployment benefits (UIB) of \$10,270 through October 23, 2010¹¹ and assuming he would remain unemployed through the end of the year, CSSD estimated that he would receive an additional \$3,555 in UIB as of December 31st.¹² Mr.

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Exh. 6.

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Exh. 5 at pg. 1.

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Exh. 3 at pg. 6.

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<http://www.childsupport.alaska.gov/>

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Exh. 3 at pg. 6.

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Exh. 5 at pg. 1.

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Exh. 5 at pg. 2.

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CSSD Proposed 2010 Calculation at pg. 1, filed November 18, 2010.

L.'s earnings and UIB for 2010 thus total \$30,682.54.¹³ When the PFD of \$1,281 is added, Mr. L.'s total income from all sources equals \$31,963.54 in 2010.¹⁴ Inserting this figure into CSSD's child support calculator results in a child support amount of \$460 per month for one child for 2010 and ongoing.¹⁵

III. Discussion

Mr. L. appealed his child support order on the basis that he took care of his daughter while the custodian was working and that he is currently unemployed. He requested that the support obligation begin now rather than in September 2009 when Ms. S. began to receive benefits on P.'s behalf. 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 calculated by CSSD in its Amended Administrative Child and Medical Support Order is incorrect.¹⁶

A. *Effective date of obligation*

A parent is obligated both by statute and at common law to support his or her children.¹⁷ This obligation begins when the child is born, but in order to simplify collections, CSSD adopted a regulation that provides it will only collect support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).¹⁸ In this case, Ms. S. began receiving Medicaid benefits for P. in September 2009, so under 15 AAC 125.105(a)(1), that is when Mr. L.'s obligation to pay support through CSSD begins. The law does not provide an avenue to delay assessment of child support until the obligor parent knows about the benefits or until a hearing can be held on the obligation, as this would deprive the child of essential support during that period of time.

B. *Child support calculation*

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 such as taxes and Social Security. CSSD correctly calculated Mr. L.'s 2009 child support at \$609 per month, based on his

¹³ Proposed 2010 calculation at pg. 2.

¹⁴ *Id.*

¹⁵ Proposed 2010 calculation at pg. 2.

¹⁶ 15 AAC 05.030(h).

¹⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁸ 15 AAC 125.105(a)(1)-(2).

actual income for that year.¹⁹ After the hearing, CSSD correctly estimated his total annual income for 2010 at \$31,963.54 and used that figure to calculate a support obligation for the year of \$460 per month.²⁰ This support amount constitutes a reasonable measure of Mr. L.'s ability to pay support. Granted, Mr. L. has been unemployed during the latter part of 2010, but based on his testimony that he is actively searching for work, his unemployment is only a temporary circumstance. It is more likely than not that Mr. L. will successfully obtain employment in the future.

C. Shared custody

Where parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in a situation in which one parent has primary custody. In general, and depending on the percentage of time each parent has overnight visitation, the parent obligated to pay child support will have a somewhat lower monthly support amount than in a primary custody scenario. The rule defines shared custody as follows:

A parent has shared physical custody of children for purposes of this rule if the children reside with that parent for a period specified in writing of at least 30 percent of the year, regardless of the status of legal custody.^[21]

In order for a visitation day to count toward the required 30% of the year, the child(ren) must stay overnight with the respective parent.²² One year is equal to 365 days, so 30% of the overnights in one year is 110 overnights. This is the minimum number of overnights needed on an annual basis to reach the threshold definition of shared custody. On a monthly basis, this would equal about 9 overnights per month.²³

If there is no court order regarding custody, a finding of shared custody under Civil Rule 90.3(f)(1) should be based on a written agreement, but the parties to child support actions rarely have one. Thus, the administrative law judge must make findings of fact regarding whether shared custody exists and, if so, what percentage of shared custody each party exercises. The

¹⁹ See Exh. 3 at pg. 6.

²⁰ Proposed 2010 calculation at pg. 2.

²¹ Civil Rule 90.3(f)(1).

²² Civil Rule 90.3, Commentary V.A.

²³ $110 \div 12 = 9.17$

parent asserting that they share physical custody, in this case, Mr. L., has the burden of proof by a preponderance of the evidence.²⁴

Mr. L. did not meet his burden on the shared custody issue. Although there was what appears to have been a fairly long period of time after September 2009 when Mr. L. provided the bulk of Ms. S.'s daycare needs for P., there is insufficient evidence that he had the child overnight any more than a "handful" of times. This small number of overnight stays does not establish shared custody and as a result, his support obligation should be calculated as a primary custody case.

D. Direct credit for support paid to custodian

Finally, Mr. L. claimed he provided all of P.'s food and diapers when he took care of her during the day, but these do not entitle him to any sort of credit against his support obligation. The purpose of a credit is to offset an obligor's payments of support directly to the custodian before the child support case is established.²⁵ The food and diapers Mr. L. purchased for P. while she was with him merely provided for her needs while she was in his custody.

IV. Conclusion

Mr. L. did not meet his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). With a minor adjustment to the 2010 calculation, his child support is now correctly calculated at \$609 per month from September 2009 through December 2009; \$460 per month for 2010; and \$460 per month, effective January 1, 2011 and ongoing. These figures should be adopted.

V. Child Support Order

- Mr. L. is liable for child support for P. in the amount of \$609 per month from September 2009 through December 2009; \$460 per month for 2010; and \$460 per month, effective January 1, 2011 and ongoing;

²⁴ See 2 AAC 64.290(e).

²⁵ See AS 25.27.020(b).

- All other provisions of the September 16, 2010, Amended Administrative Child and Medical Support Order remain in full force and effect.

DATED this 15th day of December, 2010.

By: Signed
Kay L. Howard
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 3rd day of January, 2011.

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

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