

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

IN THE MATTER OF)	OAH No. 11-0030-CSS
C E C)	CSSD No. 001163882
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is C E C's appeal of CSSD's establishment of an administrative child support order for her children, M and B. That order was issued by the Alaska Child Support Service Division (the Division). A formal hearing was held on February 9, 2010 to consider Ms. C's appeal. Ms. C appeared by telephone. The children's father B M W, and their aunt, E C, also participated. Erinn Brian, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on February 18, 2011.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that Ms. C's arrears from March 2009 through August 2009 should be set at \$212 per month, based on her income in 2009, and Mr. W having custody of both children. From September through December of 2009, Ms. C's arrears should be set at \$12.44 per month based on the parents' income in 2009, because she and Mr. W exercised divided custody of the children. In January and February of 2010 Ms. C's arrears should be set at \$403 per month, based on her income in 2010, because she did not have custody of either child. Beginning in March of 2010, Ms. C's arrears and ongoing child support should be set at \$108.70 per month based on the parents' income in 2010, because she and Mr. W have been exercising divided custody of the children since that month. The Division is not currently collecting child support for months after February of 2010 because Mr. W has withdrawn from the Division's collection services and there has been no public assistance paid since that month.

II. Facts

One or both of the children M and B received public assistance from March of 2009 through February of 2010. Ms. C is the child's mother.¹

The Division issued an Administrative Child and Medical Support Order on August 18, 2010.² Ms. C requested an administrative review of that order.³

The Division issued an Amended Administrative Child and Medical Support Order on December 7, 2010.⁴ This order set the C's ongoing child support obligation at \$405 per month. The order also set arrears going back to March of 2009.⁵ Ms. C filed a request for a formal hearing.⁶

At the hearing the parties agreed about where the children were from March of 2009 through the present. From March 2009 through August 2009, Mr. W had custody of both children. From September through December of 2009, Ms. C and Mr. W exercised divided custody of the children with M living with Ms. C and B living with Mr. W. In January and February of 2010, M lived with her aunt, E C, and B lived with Mr. W. Since March of 2010, Ms. C and Mr. W have again begun exercising divided custody of the children with M living with Ms. C and B living with Mr. W.⁷

After the hearing, the Division filed new calculations of Ms. C's monthly child support including divided custody calculations. The Division also filed a new summary of support obligation that reflects updated information about the custody of the children, when public assistance was paid, and the monthly child support amounts for Ms. C during the months covered by the Division's order.⁸

III. Discussion

Ms. C requested a formal hearing because she wanted to make sure that a divided custody calculation was used for the months that M was living with her and because Ms. C was concerned about the Division's order that she provide medical insurance coverage for the children even though they are eligible for Alaska native health care.

1 Recording of Hearing & Exhibit 9, page 7.

2 Exhibit 3.

3 Exhibit 4.

4 Exhibit 6.

5 Exhibit 6.

6 Exhibit 8.

7 Recording of Hearing.

8 Exhibit 9.

As discussed at the hearing, Ms. C needs to work with her Division caseworker to ensure that a letter is sent to her employer so that she can stop paying for extra health care coverage for the children.

Divided custody exists when parents each have primary custody of different children.⁹ In this case the parents exercise divided custody.¹⁰ The commentary to Civil Rule 90.3 explains that setting child support for divided custody situations is a two step process. First, support must be calculated using the formula found in Civil Rule 90.3(b)(6), as the Division did in its Post Hearing Brief. This formula offsets the amounts each parent would pay the other for the children in the other parent's custody.¹¹

The second step in determining divided custody support is for the court to carefully consider whether the support amount should be varied under paragraph (c)(1)(A). Divided custody should be treated as an unusual circumstance under which support will be varied if such a variation is "just and proper."¹² The Division's latest child support calculations are based on both the parents' incomes are correct and result in monthly amounts that are just and proper and should be used in this case to set ongoing modified child support.

IV. Child Support Order

1. Ms. C's ongoing child support for M and B is set at the monthly amount of \$108.70, based on divided custody, effective April 1, 2011.
2. Ms. C is liable for child support arrears for M and B in the monthly amounts of \$212 per month for the months of March 2009 through August 2009; \$12.44 per for the months of September 2009 through December of 2009; \$403 per month for the months of January and February of 2010; and \$108.70 for the month of March of 2010.
3. The Division is not currently collecting ongoing child support or arrears for the months of March 2010 through March 2011 because Mr. W has withdrawn from the Division's collection services and there has been no public assistance paid since that February 2010.
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for M and B.

⁹ Alaska Civil Rule 90.3, Commentary V.D.

¹⁰ Alaska Civil Rule 90.3, Commentary V.D.

¹¹ Alaska Civil Rule 90.3, Commentary V.D.

¹² Alaska Civil Rule 90.3, Commentary V.D.

5. All other provisions of the Division's Administrative Child Support and Medical Support Order issued on December 7, 2010 remain in effect.

DATED this 10th day of March, 2011.

By: Signed
Mark T. Handley
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 30 day of March, 2011

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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