

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

IN THE MATTER OF:)

K A. M)

) OAH No. 11-0128-CSS

) CSSD No. 001164191

DECISION AND ORDER

I. Introduction

This case involves the obligor K A. M's appeal of a Modified Administrative Child Support and Medical Support Order that CSSD issued on March 3, 2011. The obligee children are A, 17, and H, 15. The other party is L G. Z, paternal grandmother. The formal hearing was held on April 21, 2011. Ms. M did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. M is liable for modified ongoing support of \$375 per month for two children, or \$278 per month for one child, effective February 1, 2011, with additional provisions set forth in the Order section, below.

II. Facts

A. Procedural History

Ms. M's child support obligation for A's younger brother, H, was initiated in August 2010.² On January 3, 2011, CSSD issued a notice initiating a modification review so as to add A to Ms. M's support order for H.³ Ms. M did not provide income information, so CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Ms. M's child support to \$351 per month for two children, effective February 1, 2011, and added arrears totaling \$357 for A for the period from July 2010 through January 2011.⁴ Ms. M appealed on March 31, 2011, but she did not raise specific issues in her appeal. Rather, she merely attached copies of two pages from CSSD's order.⁵

¹ Telephone calls were placed to the two contact numbers for Ms. M. Neither call was answered but a voicemail message was left for her at one number. Ms. M has not contacted the OAH in response.

² See Exh. 1 at pg. 1.

³ Exh. 3 at pg. 4.

⁴ Exh. 4.

⁵ Exh. 5.

On April 7, 2011, the OAH sent Ms. M a notice of the date and time for the hearing by certified mail to her last-known address. She received and signed for it on April 14, 2011. Before the hearing on April 21, 2011, two unsuccessful attempts were made to reach Ms. M for the hearing. Because she received and signed for the notice of hearing, service of the notice on Ms. M was found to be effective pursuant to Department of Revenue regulations and the hearing was conducted without her participation.⁶

*B. Material Facts*⁷

Ms. M has three children; the oldest, R, has emancipated. A child support order was recently established for H, 15, the youngest child and this modification action seeks to add A, 17, to the support order for H.

Ms. Z is the paternal grandmother of A and H. H lived with Ms. Z from the summer of 2008 through November 2010 and she received public assistance benefits on his behalf during part of that time. He is currently in the custody of Ms. Z's daughter, C G, who is H's aunt and his court-appointed guardian. C and her husband have had custody of Ms. M's children on and off since 2003. The Gs have not applied for child support services, so until they do, or until H receives some form of public assistance, Ms. M's ongoing support obligation for him has been suspended as of December 2010.

Ms. M's middle child, A, just turned 17 and is currently living with Ms. Z. Her grandmother reports that A is doing well in school. Public assistance benefits have been paid on A's behalf since July 2010.

Ms. M is not employed and her income primarily consists of the PFD, unemployment benefits and her Native corporation dividends – in 2010 her total income was \$3,436.⁸ CSSD correctly calculated Ms. M's 2010 child support at \$77 per month for two children (\$57 per month for one child).⁹ Ms. M's child support obligation for 2011 and ongoing will be discussed below.

⁶ See 15 AAC 05.010(c). CSSD is one of the divisions in the Department of Revenue.

⁷ This appeal and the one Ms. M filed when CSSD established a child support order for H involve essentially the same set of facts. Therefore, some of the facts recited herein were taken from the earlier decision: *In the Matter of K A. M*, OAH No. 11-0006-CSS (Department of Revenue, March 23, 2011).

⁸ Affidavit of Erinn Brian, filed April 26, 2011. See also Exh. 6.

⁹ Exh. 6.

III. Discussion

Ms. M filed an appeal and requested a formal hearing, but she did not participate in the hearing. She did not submit any evidence with her appeal, which was blank and did not identify any appeal issues. Rather, she merely copied and attached pages 6-7 of the modification order to her appeal. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear. The person who filed the appeal, in this case, Ms. M, has the burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.¹⁰

A parent is obligated both by statute and at common law to support his or her children.¹¹ CSSD collects support from the date the custodian requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren).¹² Ms. Z began receiving public assistance on A's behalf beginning in July 2010, to that is the date Ms. M's obligation to support A through CSSD should begin.¹³

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ Adding other children to a child support order is a material change in circumstances.¹⁵ A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of February 1, 2011.¹⁶

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." The obligor has the burden of proving his or her earning capacity.¹⁷ During the hearing, CSSD asserted that Ms. M is voluntarily unemployed and that its modification order should be affirmed. If a parent is found to be voluntarily and unreasonably unemployed or underemployed, his or her child support amount

¹⁰ 15 AAC 05.030(h).

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² 15 AAC 125.105(a)(1)-(2).

¹³ *See* Exh. 4 at pg. 7.

¹⁴ AS 25.27.190(e).

¹⁵ *See* 15 AAC 125.321(b)(2)(B).

¹⁶ 15 AAC 125.321(d). In this case, the notice was issued on January 3, 2011. Exh. 3.

¹⁷ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

may be calculated from that parent's "potential income," which should be based on his or her "work history, qualifications and job opportunities."¹⁸

In cases in which CSSD is claiming voluntary unemployment or underemployment, the court or administrative law judge must determine whether the parent has engaged in voluntary conduct "for the purpose of becoming or remaining unemployed."¹⁹ It is also necessary to determine whether the parent's unemployment is unreasonable. An integral part of the analysis is whether the parent's lack of employment is a result of "economic factors," as in being laid off, or of "purely personal choices."²⁰ It is not necessary to prove the individual was purposefully avoiding a support obligation, or acting in bad faith, in order to impute income to a parent.²¹

The Alaska Supreme Court further explained the essence of the analysis in *Beaudoin v. Beaudoin*²² by stating that "the relevant inquiry under Civil Rule 90.3 is . . . whether a parent's current situation and earnings reflect a voluntary and unreasonable decision to earn less than the parent is capable of earning." An obligor parent is free to change jobs and careers, but the custodial parent and child should not have to finance that change.²³ The commentary to Civil Rule 90.3 directs that tribunals adjudicating child support "shall consider the totality of the circumstances in deciding whether to impute income."²⁴

CSSD's position is that Ms. M is voluntarily and unreasonably unemployed or underemployed. As a result, the agency calculated Ms. M's 2011 and ongoing child support at \$351 per month for two children (\$260 per month for one child).²⁵ CSSD imputed annual income of \$16,120 to Ms. M, which it arrived at by multiplying the minimum wage of \$7.75 per hour times full-time employment of 2,080 hours.²⁶ CSSD also added the 2010 PFD figure of \$1,281²⁷ to Ms. M's income, for total annual income of \$17,401.²⁸ After the hearing, CSSD

18 Civil Rule 90.3(a)(4).

19 *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

20 *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

21 *Kowalski*, 806 P.2d at 1371.

22 24 P.3d 523 (Alaska 2001).

23 *Olmstead v. Ziegler*, 42 P.3d 1102, 1105 (Alaska 2002).

24 Civil Rule 90.3, Commentary III.C.

25 Exh. 4 at pg. 6.

26 *Id.*

27 The prior year's figure is used in child support calculations until the current year's PFD amount is announced in September of each year.

28 Exh. 4 at pg. 6.

adjusted these figures to \$375 per month for two children or \$278 per month for one child, based on the addition of Ms. M's expected Native corporation dividends which were left out of the earlier calculation.²⁹

Other than her appeal form, Ms. M has not appeared or provided any evidence in this appeal to contradict CSSD's determination. It is her burden to prove that she is not voluntarily and unreasonably unemployed or underemployed, and that the modification order CSSD issued is incorrect. This is the second time that Ms. M has received and signed for her notice of the date and time for a hearing, yet not appeared for the hearing, even telephonically. She has thus not met her burden of proof and cannot prevail in her appeal. Until she actively participates in the process and provides sufficient proof of her financial circumstances, Ms. M's child support obligation for A and H will remain in the amount calculated by CSSD.

IV. Conclusion

Ms. M failed to meet her burden of proving CSSD's Modified Administrative Child Support and Medical Support Order was issued in error. She is thus obligated to pay child support arrears just for A in the amount of \$20 per month for July 2010 through January 2011, and to pay modified ongoing child support of \$375 per month for two children (\$278 per month for one child), effective February 1, 2011. Until H's custodian requests CSSD's services or receives public assistance benefits on his behalf, CSSD will collect support only for A in the one-child amount.

V. Child Support Order

- Ms. M is liable for child support arrears for A in the amount of \$20 per month from July 2010 through January 2011;
- Ms. M is liable for modified ongoing support of \$375 per month for two children, or \$278 per month for one child, effective February 1, 2011;
- Child support for H was suspended as of December 1, 2010, and shall remain suspended unless H's custodian applies for services or receives public assistance benefits on his behalf;

²⁹ See Exh. 6 at pg. 2.

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 3, 2011, remain in full force and effect.

DATED this 25th day of May, 2011.

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 13th day of June, 2011.

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

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