

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

IN THE MATTER OF:)

R W)

OAH No. 11-0152-CSS

CSSD No. 001162177

DECISION AND ORDER

I. Introduction

R L. W, the obligor, appeals the March 17, 2011 Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) ordering that his monthly child support obligation for two children is \$1,192. L A J is the custodian of record and the oblige children are J L and R A. There have been several hearings in this matter and throughout those proceedings all but two issues were resolved: 1) the effective date of Mr. W's child support obligation, and 2) Mr. W's monthly medical credit. Mr. W has been represented by counsel, CSSD has been represented by Child Support Specialist Andrew Rawls, and the custodian, L A J is self represented.

Mr. W has established that is more likely than not that the March 17, 2011 Amended Administrative Child and Medical Support Order that set his monthly support obligation for two children at \$795 effective June 2010 was incorrect. When calculated to include all allowable deductions, Mr. W's monthly support obligation for two children should be \$788 per month effective November 2009. Mr. W is entitled to a credit for insurance payments to insure J L and R A. However, Mr. W has not met his burden of proof that the March 2011 Amended Administrative Child and Medical Support Order will result in an incorrect credit for medical. The Medical Support Order prescribes method for calculating and adjusting child support payment to timely reflect an increase or decrease in the cost of providing health insurance. Mr. W's request to deviate from the Medical Support order is not supported by the evidence presented.

II. Facts

This child support case was initiated when Mr. W filed an application for Child Support Services requesting paternity testing.¹ In response, on October 6, 2009 CSSD issued a Notice of

¹ Exh. 1.

Paternity and Financial Responsibility informing Mr. W that as the possible father he may be responsible for child support.² Mr. W received the Notice on October 14, 2009. Testing confirmed that Mr. W is the biological father of J L and R A and an Order Establishing Paternity was issued on February 23, 2010.³

On June 30, 2010, Ms. J filed an application for child support services.⁴ The application asked if Ms. J was a member of a tribe or native corporation. She answered “yes” that she was a member of the Cherokee Nation.⁵ In response to an inquiry regarding whether the children were eligible for Indian Health Services, she again answered in the affirmative.⁶

In response to Ms. J’ request for child support services, CSSD requested the parents provide current financial information. Using the information provided by Mr. W, CSSD issued an Administrative Child Support and Medical Support Order on January 12, 2011. This order established Mr. W’s monthly child support obligation for two children at \$1,192 per month effective February 2011, and arrears totaling \$3,579 for the time period from June 2010 to January 2011.⁷

Mr. W disagreed and asked for an administrative review because he believed his income was overstated.⁸ CSSD reviewed its order and agreed that it had overstated Mr. W’s income for purposes of child support. In response CSSD issued an Amended Administrative Child and Medical Support Order on March 17, 2011. This order reduced Mr. W’s monthly support for two children to \$795 per month effective April 1, 2011 and ongoing.⁹ When recalculated using the new support amount Mr. W’s arrears totaled \$7,950 for the period from June 2010 to March 2011. Mr. W exercised his right to a formal appeal. He believed an appeal was appropriate because CSSD had failed to include a deduction for retirement contributions from his employer and his union dues. He also believed his credit for providing health insurance for the children should be annualized rather than reflect the month to month payment.

² Exh. 2.

³ Exh. 7.

⁴ Exh. 8.

⁵ Exh. 8 at 2.

⁶ Exh. 8 at 3.

⁷ Exh. 11.

⁸ Exh. 12.

⁹ Exh. 16.

The first hearing on Mr. W's appeal was June 7, 2011. At the hearing's conclusion CSSD raised as an issue that the March 2011 Amended Administrative Child and Medical Support Order failed to correctly account for arrears. CSSD asked that arrear be calculated from the month following the service of the Notice of Paternity and Financial Responsibility, November 2009, not June 2010, the month the custodian applied for services.

CSSD could not recall the citation for a recent decision that addressed a similar factual situation. The decision, CSSD contended, concluded that the Department's regulation, 15 AAC 125.100(c) requires that when, as here, the non custodial parent applies for services before to the custodial parent has applied, child support should accrue in the month following service of the Notice of Paternity and Financial Responsibility.¹⁰ To provide the parties with an opportunity to address CSSD's contention an order was issued providing parties with the citation and setting a supplemental hearing. In that same order Mr. W was informed that his employer's mandatory contribution to his retirement account would not be a deductible expense under Civil Rule 90.3 unless he could establish that the employer contribution was income or provide legal authority for his proposition.

The supplemental hearing was held July 11, 2011. At that time the parties agreed the parties agreed that Mr. W's income for 2009, 2010, and 2011 remained fairly steady and an annual total gross income in the amount of \$43,466 was appropriate for purposes of calculating child support. The parties also agreed that Mr. W's union dues were higher than originally deducted by CSSD. Finally, Mr. W withdrew his request to deduct the employer's contributions to his retirement account because they were not considered income to Mr. W. All that remained to be resolved was the date child support should begin to accrue and whether Mr. W's health care credit could be calculated other than as provided for in the Amended Administrative Child and Medical Support Order.

Mr. W contended that it was appropriate to deviate from the order because his health care benefits regularly change each year as his hours change. He testified that his work is seasonal. When he is working his monthly hours are high enough that his employer's contributed to his health care coverage, and then as his season slows down he must pay the entire premium as a

¹⁰ *In re W.P.F III*, OAH No. 10-0432-CSS (January 26, 2011).

significant increase.¹¹ For this reason, Mr. W requests an order directing this order include a health care credit amount that calculated on an extrapolated annual expense.

The parties and the Administrative Law Judge agree that when Mr. W's monthly child support obligation for two children is calculated to include the allowable deductions his monthly support obligation is \$788 regardless of whether his obligation commenced in November 2009 (date of Notice of Paternity and Financial Responsibility) or June 2010 (date of custodian's request for services).¹²

III. Discussion

A. Mr. W's Child Support Obligation Begins November 2009

The Department's regulation 15 AAC 125.100(c) provides:

The agency's notice and finding of financial responsibility establishes an ongoing support obligation owed by the noncustodial parent. The ongoing support obligation is effective as of the first day of the month following service on the noncustodial parent of the notice and finding of financial responsibility, a notice of paternity and financial responsibility or a paternity complaint, whichever is the earliest.

The application of this regulation to a similar factual situation was discussed in *In re W.F.P., III*, OAH No. 10-0432-CSS (January 26, 2011). There, as with Mr. W, the noncustodial parent applied to establish paternity prior to the custodial parent's application for child support services. Applying 15 AAC 125.100(c) it was determined that the noncustodial parent's obligation to pay ongoing support established by CSSD was effective as of the first of the month following service of the notice of paternity and financial responsibility.¹³

CSSD served Mr. W with a Notice of Paternity and Financial Responsibility in October 2009. Accordingly, as applied in prior decisions and as directed by the Department's regulation, Mr. W's ongoing support obligation is effective as of November, 2009.

¹¹ Mr. W did not want his child support obligation treated as that of a seasonal employee.

¹² Attachment A.

¹³ *Id.*

B. Credit for Medical Coverage

Mr. W, if he pays the cost of insurance for the children is entitled to a credit of 50% of the premium cost from his support obligation. A careful review of the Amended Administrative Child and Medical Support Order and other documents in the record reveal:

1. The children may be eligible for health care through Indian Health Service, so no additional insurance may be required.

Ms. J, on her application for child support services indicated that she was a member of the Cherokee Nation and that the children are eligible for health care coverage through Indian Health Services.¹⁴ This was reflected in the Administrative Child and Medical Support Order at ¶ III (H).¹⁵

For reasons not apparent in the record, the Amended Administrative Child and Medical Support Order does not acknowledge the children are eligible for coverage through Indian Health Services.¹⁶

2. If additional coverage is required, it is to be calculated per the Amended Administrative Child and Medical Support Order.

Mr. W's argument in support of annualizing his health care credit while logical and attractive is also unpersuasive. There are many obligor parents who are seasonally employed. Those obligors have coverage at a reduced cost via employer contributions to healthcare premiums and the remainder of the year the obligors must cover the entire cost of coverage.

The Amended Administrative Child and Medical Support Order provides that should the cost of insurance change, as it will for Mr. W, then "CSSD will adjust the amount of the child support obligation accordingly, without further order of the agency. . . The parent purchasing the insurance shall provide documentation of the change to CSSD."¹⁷

Mr. W proposed this Decision and Order identify an amount of insurance to be credited each month. He contends that extrapolating and annualizing the cost of his insurance is fair

¹⁴ Exh. 8 at 2, 3.

¹⁵ Exh. 11 at 4 ¶ III (H) ("The children are eligible for health care through Indian Health service and these services are available to the children. Therefore, no additional insurance is required while these services are available.").

¹⁶ Exh. 16 at 4 ¶ IV (H) ("Health insurance for the children is not now available at a reasonable cost or its availability is unknown...").

¹⁷ Exh. 16 at 3, ¶IV (D).

because he has a pattern that allows some certainty in the calculation. This is not what is provided for in the Amended Administrative Child and Medical Support Order. As the person challenging the order, Mr. W must establish that the Medical Support Order is incorrect. He has failed to provide persuasive evidence that would support deviating from the standard Medical Support Order other than for his convenience.¹⁸

V. Conclusion

Mr. W's child support obligation under CSSD's purview commenced November 2009 the month after he received the Notice of Paternity and Financial Responsibility. Mr. W's health care credit will be calculated as provided for in the March 2011 Amended Administrative Child and Medical Support Order.

V. Order

- Mr. W is liable for child support in the amount of \$788 per month for two children effective November 2009 and ongoing.
- All provisions of the Amended Administrative Child Support and Medical Support Order issued March 17, 2011 remain in effect.

DATED this 16th day of September, 2011.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹⁸ If annualized, Mr. W would not have file paperwork with CSSD informing them of a change in coverage twice a year. Moreover, if Mr. W's proposal were taken literally, he would have the actual amount of child support ordered reduced by a predetermined credit rather than an actual credit for child support it is possible that Mr. W would need to petition for modification and a finding of material change in circumstances each time Mr. W sought to increase his credit for health insurance. This would be administratively inefficient and detrimental to Mr. W who may be entitled to an increased credit but the amount of credit may not be seen as a material change in circumstances.

In the alternative, if Mr. W is asking that this Decision and Order direct an amount certain be credited to his account, it would have the same practical implication previously discussed. As written the Medical Support Order of the Amended Administrative Child and Medical Support Order permits CSSD to respond quickly and efficiently to a parents changing employment and should be continued under the facts presented in this instance.

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 October, 2011.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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