

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

|                   |   |                     |
|-------------------|---|---------------------|
| IN THE MATTER OF: | ) |                     |
|                   | ) | OAH No. 11-0359-CSS |
| M D. W            | ) | CSSD No. 001171394  |
| _____             | ) |                     |

**DECISION AND ORDER**

**I. Introduction**

The custodian of record, M R. G, appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. W's case on August 29, 2011. The obligee child is S, age 12.

The formal hearing was held on October 3, 2011, and a supplemental hearing was convened on January 26, 2012. Both parties participated. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, Mr. W's child support is set at \$639 per month for September and October 2010; \$86 per month for November and December 2010; \$48 per month for January through April 2011; and \$663 per month for May through November 2011. The court entered a child support order as of December 1, 2011, so this administrative child support action is suspended as of that date.

**II. Facts**

*A. Procedural History*

Ms. G applied for child support services for S in September 2010.<sup>1</sup> CSSD initiated a child support action on S's behalf, which resulted in the division issuing an Amended Administrative Child and Medical Support Order on August 29, 2011.<sup>2</sup> That order set Mr. W's ongoing child support at \$278 per month, with arrears totaling \$2,224 from September 2010 through August 2011.<sup>3</sup> Ms. G appealed, asserting that since May 2011 she had been exercising primary custody and that Mr. W's income from employment had increased.<sup>4</sup>

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<sup>1</sup> Pre-hearing brief at pg. 1; Exh. 5 at pg. 7.  
<sup>2</sup> Exh. 6.  
<sup>3</sup> Exh. 5.  
<sup>4</sup> Exh. 7.

*B. Material Facts*

1. Custody

Mr. W and Ms. G were formerly married and have one daughter, S, age 12. They separated in mid-2010. Ms. G applied for services in September 2010 and she had primary custody of S until November 14<sup>th</sup> of that year. Beginning on November 15<sup>th</sup>, they began sharing custody of S on a 50/50 basis. This arrangement lasted until about May 1, 2011, when Mr. W became employed on the No Name. From May 2011 until the end of September 2011, the last month for which records were provided,<sup>5</sup> the parties did exchange S when Mr. W was home from work and available to take her, but the time he had her for overnight visits did not constitute shared custody. For those months, Ms. G had S for 110 of the 153 overnights,<sup>6</sup> which equals 71.9% of the time.<sup>7</sup> This constitutes primary custody in Ms. G.

The parties' divorce was finalized late in 2011. On December 8, 2011, the court awarded Ms. G primary custody of S and ordered Mr. W to pay child support in the amount of \$607 per month, effective December 1, 2011.<sup>8</sup>

2. Child Support Calculations

a) 2010

In 2010, Mr. W received wages of \$45,485.88 from his employer, and unemployment benefits of \$988.<sup>9</sup> A primary custody child support amount calculated from this income figure, plus the Permanent Fund dividend (PFD) of \$1,281, equals \$639 per month for one child.<sup>10</sup>

For that same year, Ms. G received wages in the amount of \$37,144.80 from her employer, plus the PFD.<sup>11</sup> A primary custody child support amount calculated from her income equals \$525 per month for one child.<sup>12</sup>

It is undisputed that the parties exercised 50/50 shared custody of S in November and December of 2010. CSSD correctly determined that Mr. W owes child support of \$86 per month for these two months.<sup>13</sup>

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<sup>5</sup> See Ms. G's calendar of overnight stays, dated October 1, 2011.

<sup>6</sup> *Id.*

<sup>7</sup>  $110 \div 153 = 71.9\%$ .

<sup>8</sup> Exh. 22.

<sup>9</sup> Exh. 8 at pgs. 1-2.

<sup>10</sup> Exh. 6 at pg. 9.

<sup>11</sup> Exh. 9; Exh. 6 at pg. 10.

b) 2011

In 2011, Mr. W received wages of \$44,971.43 from his employer, and unemployment benefits of \$4,859.<sup>14</sup> A primary custody child support amount calculated from this income figure, plus the PFD of \$1,174, equals \$663 per month for one child.<sup>15</sup>

For that same year, Ms. G received wages in the amount of \$47,066.89 from her employer, plus the PFD.<sup>16</sup> A primary custody child support amount calculated from her income equals \$599 per month for one child.<sup>17</sup>

It is undisputed that the parties exercised 50/50 shared custody of S from January 2011 through April 2011. A child support amount calculated from the parties' income figures results in a shared custody calculation of \$48 per month for Mr. W for those four months.<sup>18</sup>

For the remainder of 2011, Ms. G exercised a primary custody of S. That child support amount has been correctly calculated for Mr. W in the amount of \$663 per month.<sup>19</sup> This figure should be effective for the period from May 2011 through November 2011. As of December 1, 2011, the court has exercised its authority to enter a child support amount and has done so in an order dated December 8, 2011.<sup>20</sup>

3. Direct Payments

Prior to the hearing, both parties reported that Mr. W had made direct child support payments to Ms. G.<sup>21</sup> The total amount paid is \$2,254, and Mr. W is entitled to a credit in that total amount. In the event he made payments not reflected in this total, he should submit document to CSSD for consideration.

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12 Exh. 6 at pg. 10.  
13 Exh. 6 at pg. 13.  
14 Exh. 23 at pg. 1-2.  
15 Attachment A.  
16 Exh. 24.  
17 Attachment B.  
18 Attachment C.  
19 Attachment A.  
20 Exh. 22.  
21 Exhs. 3 & 5.

### III. Discussion

#### A. Shared Custody

A parent is obligated both by statute and at common law to support his or her children.<sup>22</sup> By regulation, CSSD collects 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).<sup>23</sup> In this case, Ms. G applied for child support services in September 2010, so Mr. W is thus obligated to pay support through CSSD as of that date.

Where parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than where one parent has primary custody. Each parent's primary custody support obligation to the other is determined, based on the income figures for that parent for the year in question. Then the resulting figure is inserted into the shared custody formula. 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.<sup>[24]</sup>

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.<sup>25</sup> One year is equal to 365 days, so 30% of the overnights in one year equal 110 overnights. This is the minimum number of overnights needed on an annual basis to reach the threshold definition of shared custody.

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 cases through CSSD rarely have one. Thus, the administrative law judge must determine whether shared custody existed, and if so, what percentage of shared custody each party exercised. Shared

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<sup>22</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>23</sup> 15 AAC 125.105(a)(1)-(2).

<sup>24</sup> Civil Rule 90.3(f)(1).

<sup>25</sup> Civil Rule 90.3, Commentary V.A.

physical custody must be proven by a preponderance of the evidence by the party asserting it has occurred.<sup>26</sup>

Mr. W met his burden on the shared custody issue for the period of time from November 2010 through the end of April 2011. The parties were essentially in agreement that they exercised shared custody during this period of time. However, shared custody has not been established in this case as of May 2011. At that time, Mr. W began working on the No Name and he was not able to exercise a sufficient number of overnight visits with S to establish that he had shared custody of the child. Ms. G submitted copies of calendars she kept during that period of time. From May 2011 through September 2011, she had S a total of 110 of the 153 overnights available during those five months. A simple mathematical formula of dividing the total number of overnights exercised by the total number of overnights available results in a finding that Ms. G had S for 71.9% of the time.<sup>27</sup> According to Civil Rule 90.3(f)(1), any overnight visitation in excess of 70% of the time constitutes primary physical custody. Thus, Mr. W is liable for paying support based on primary custody for the period of time from May 2011 through November 2011. This obligation has been calculated at \$663 per month, so this figure should be adopted.

*B. Other Income Issues*

Ms. G raised two other issues regarding Mr. W's income. First, she claims, and he does not dispute, that he received rental income from third parties in the former marital home. Second, she claims that he works "under the table," and that his additional income from these activities should be added to his income.

Ms. G requested that the rent be included in Mr. W's income for calculating child support, but CSSD argued that any rental income from the home should be considered in the parties' divorce litigation. CSSD's argument is correct. There is insufficient evidence in the record to assign any rents he may have received for a discrete period of time to Mr. W as income in the child support action. Also, AS 25.24.160(a)(4) provides for the division of the parties' marital property, including the family home, and that is where this issue should be resolved. Similarly, any income he may have received from additional work outside his regular employment has not been shown to increase his net income after taxes and expenses he may have incurred in order to perform that additional work – Mr. W's 2011 tax returns were not submitted.

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<sup>26</sup> See 2 AAC 64.290(e).

Finally, it does not appear that the court considered these figures, either, in setting his ongoing child support at \$607 per month, effective December 1, 2011.<sup>28</sup>

*C. Credit for Direct Payments*

CSSD may give the obligor credit for direct payments made “before the time the obligor is ordered to make payments through the agency,” so long as the direct payment was not made before the first date support is due in the administrative child support action.<sup>29</sup> An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.<sup>30</sup>

Mr. W met his burden of proof on the direct payment issue. Both parties to this appeal reported that Mr. W had made direct child support payments to Ms. G in 2010 and 2011.<sup>31</sup> CSSD determined that the total amount he paid was \$2,254 through July 2011, and Mr. W is entitled to a credit in that total amount. In the event he made additional payments not reflected in this total figure, he should submit document to CSSD for consideration.

**IV. Conclusion**

The parties exercised shared custody of S on a 50/50 basis from November 2010 through April 2011. At all other times, Ms. G has exercised primary custody. Mr. W’s child support obligation has been correctly calculated for all the time periods at issue and he is entitled to a direct pay credit of \$2,254 through July 2011. The court entered a custody and support order effective December 1, 2011, so the ongoing amount is suspended as of that date in this administrative child support action.

**V. Child Support Order**

1. Mr. W is liable for child support for S in the amount of \$639 per month for September and October 2010; \$86 per month for November and December 2010; \$48 per month for January through April 2011; and \$663 per month for May through November 2011;
2. The court entered a child support order as of December 1, 2011, so this

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<sup>27</sup> See n.7.  
<sup>28</sup> See Exh. 22.  
<sup>29</sup> AS 25.27.020(b).  
<sup>30</sup> *Id.*  
<sup>31</sup> Exhs. 3 & 5.

administrative child support action is suspended as of that date;

3. Mr. W is entitled to a direct pay credit in the total amount of \$2,254 through July 2011;
4. All other provisions of the Amended Administrative Child Support and Medical Support Order dated August 29, 2011, remain in full force and effect.

DATED this 12<sup>th</sup> day of June, 2012.

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 29<sup>th</sup> day of June, 2012.

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

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

## Department of Revenue/Child Support Services

The results from this calculator are only estimates and are not binding on the court or CSSD.

Date: 06/12/2012 Case Number: 001171394 Tax Year: 2011

Paying Parent Name: M D. W

### Annual Gross Income

|   |                    |
|---|--------------------|
| Wages subject to FICA                                       | \$44,971.43        |
| Wages subject to SBS  | \$0.00             |
| PFD   | \$1,174.00         |
| Unemployment Insurance Benefits                             | \$4,859.00         |
| Military Specialty Pay                                      | \$0.00             |
| Other Taxable Income  | \$0.00             |
| <b>Total Taxable Gross Income:</b>                          | <b>\$51,004.43</b> |
| Military Non-Income Pay (BAH/ COLA/ BAS)                    | \$0.00             |
| Income received by child(ren) of order from Social Security | \$0.00             |
| Workers' Compensation                                       | \$0.00             |
| Non-Taxable Dividends                                       | \$0.00             |
| Income from Self Employment                                 | \$0.00             |
| Other Non-Taxable Income                                    | \$0.00             |
| <b>Total Non-taxable Gross Income:</b>                      | <b>\$0.00</b>      |

### Monthly Allowable Deductions

|   |          |
|---|----------|
| Federal Income Tax                                | \$544.88 |
| FICA  | \$211.74 |
| Supplemental Benefits System                      | \$0.00   |
| Retirement  | \$162.44 |
| Union Dues  | \$0.00   |
| SUI (Unemployment Insurance)                      | \$16.72  |
| Child Support or Alimony in Prior Relationship    | \$0.00   |
| Work-related Child Care for Children in this Case | \$0.00   |
| Cost of Support for Prior Children in the Home    | \$0.00   |
| Other Deductions                                  | \$0.00   |

Recalculate Amounts

Start Over

TOTAL GROSS INCOME: \$51,004.43 TOTAL MONTHLY DEDUCTIONS: \$935.78

**Adjusted Annual Income** \$39,775.07

### Annual Child Support Payment (without credits)

1 Child \$7,955.01

### Monthly Child Support Payments without Credits/ Debits

1 Child \$663.00

Monthly Medical Credit \$0.00



## Department of Revenue/Child Support Services

The results from this calculator are only estimates and are not binding on the court or CSSD.

Date: 06/12/2012 Case Number: 001171394 Tax Year: 2011

Paying Parent Name: M R. G

### Annual Gross Income

|   |                    |
|---|--------------------|
| Wages subject to FICA                                       | \$47,066.89        |
| Wages subject to SBS  | \$0.00             |
| PFD   | \$1,174.00         |
| Unemployment Insurance Benefits                             | \$0.00             |
| Military Specialty Pay                                      | \$0.00             |
| Other Taxable Income  | \$0.00             |
| <b>Total Taxable Gross Income:</b>                          | <b>\$48,240.89</b> |
| <br>  |                    |
| Military Non-Income Pay (BAH/ COLA/ BAS)                    | \$0.00             |
| Income received by child(ren) of order from Social Security | \$0.00             |
| Workers' Compensation                                       | \$0.00             |
| Non-Taxable Dividends                                       | \$0.00             |
| Income from Self Employment                                 | \$0.00             |
| Other Non-Taxable Income                                    | \$0.00             |
| <b>Total Non-taxable Gross Income:</b>                      | <b>\$0.00</b>      |

### Monthly Allowable Deductions

|   |          |
|---|----------|
| Federal Income Tax                                | \$487.31 |
| FICA  | \$221.61 |
| Supplemental Benefits System                      | \$0.00   |
| Retirement  | \$300.77 |
| Union Dues  | \$0.00   |
| SUI (Unemployment Insurance)                      | \$16.72  |
| Child Support or Alimony in Prior Relationship    | \$0.00   |
| Work-related Child Care for Children in this Case | \$0.00   |
| Cost of Support for Prior Children in the Home    | \$0.00   |
| Other Deductions                                  | \$0.00   |

Recalculate Amounts

Start Over

TOTAL GROSS INCOME: \$48,240.89

TOTAL MONTHLY DEDUCTIONS: \$1,026.41

**Adjusted Annual Income** \$35,923.97

### Annual Child Support Payment (without credits)

1 Child \$7,184.79

### Monthly Child Support Payments without Credits/ Debits

1 Child \$599.00

Monthly Medical Credit \$0.00

ATTACHMENT B

# SHARED CUSTODY CHILD SUPPORT GUIDELINES WORKSHEET

CASE NUMBER: 001 17 1394  
 CUSTODIAN: M      R. G  
 NON-CUSTODIAL PARENT: M      D. W  
 YEAR: 2011

Use this form to determine the child support calculation defined by CR 90.3

|  | <u>A</u><br><u>CUSTODIAN</u> | <u>B</u><br><u>NON-CUSTODIAN</u> |
|--|------------------------------|----------------------------------|
| 1 Monthly child support per Primary custody calculation  | <u>\$599.00</u>              | <u>\$663.00</u>                  |
| 2 Percentage of time child(ren) will be with each parent.  | <u>50%</u>                   | <u>50%</u>                       |
| 3 Multiply line 1A times 2B  | <u>\$299.50</u>              |                                  |
| 4 Multiply line 1B times 2A  |                              | <u>\$331.50</u>                  |
| 5 the difference of lines 3 & 4 goes in the column that had the larger amount on lines 3 or 4 (one line is left blank) | <u>\$0.00</u>                | <u>\$32.00</u>                   |
| 6 Multiply line 5 by 1.5 (one line is left blank).<br>This amount is the <b>MONTHLY CHILD SUPPORT AMOUNT</b>           | <u>\$0.00</u>                | <u>\$48.00</u>                   |
| 7 Monthly Medical Credit   | <u>\$0.00</u>                | <u>\$0.00</u>                    |
| 7 Monthly Medical Debit  | <u>\$0.00</u>                | <u>\$0.00</u>                    |
|  | <u>\$0</u>                   | <u>\$48</u>                      |
| <b>MONTHLY CHILD SUPPORT AMOUNT TO BE PAID AFTER CREDIT/DEBIT:</b>   |                              |                                  |
| <b>MONTHLY CHILD SUPPORT TO BE PAID BY:</b>  |                              | <u>M</u> <u>D. W</u>             |