

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

IN THE MATTER OF:)

E J. M)

) OAH No. 11-0397-CSS

) CSSD No. 001170300

DECISION AND ORDER

I. Introduction

E J. M appeals an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on September 28, 2011. The obligee children are C, 4, and J, 3. There are two custodians in this matter – mother, W F. M, and grandmother, G L.

The formal hearing was initially convened on December 21, 2011, and was completed on January 19, 2012. All three parties participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD.

Based on the record and after careful consideration, Mr. M's child support obligation for C and J is set at \$129 per month for August 2010 through December 2010; \$50 per month for 2011; and \$296 per month for two children (\$219 for one child), effective as of January 2012 and ongoing.

II. Facts

A. Procedural History

Public assistance benefits for C and J began to be paid in August 2010.¹ Mr. M's name was already on C's birth certificate, so CSSD established Mr. M's paternity of J.² CSSD then issued an Administrative Child Support and Medical Support Order, setting Mr. M's child support at \$304 per month.³ Mr. M requested an administrative review, after which CSSD issued an Amended Administrative Child and Medical Support Order on September 28, 2011, that set Mr. M's 2011 and ongoing child support at \$50 per month for two children, with arrears of \$1,095 for the period from August 2010 through September 2011.⁴ Mr. M appealed on

¹ Exh. 5 at pg. 6.

² Exhs. 1-2.

³ Exh. 3.

⁴ Exh. 5.

October 6, 2011, challenging CSSD's inclusion of his Native corporation dividends in his income figures for the child support calculation.⁵

A. Material Facts

E M and W M are the parents of C and J. Both Ms. M and grandmother G L have been custodians of record for the children.

In 2010, Mr. M had income from earnings of \$3,635.34, unemployment benefits of \$3,530, and Native corporation dividends of \$412, for total income of \$7,577.34.⁶ When these figures are inserted into CSSD's online child support calculator, it results in a monthly support amount of \$129 per month for two children from August through December of that year.⁷

Mr. M was incarcerated for much of 2011, and did not have any wages from employment.⁸ His only income was derived from unemployment benefits of \$208, and Native corporation dividends of \$412.⁹ As a result, his child support obligation for 2011 is set at the statutory minimum amount of \$50 per month.¹⁰

On January 18, 2012, Mr. M started working as a line cook at a local restaurant for 30 hours per week, earning \$11.75 per hour. CSSD estimated that this hourly wage would result in total income for 2012 of \$17,940.¹¹ When his Native corporation dividends totaling \$565.82 are added and the figures are inserted into CSSD's online child support calculator, it results in a child support amount of \$296 per month for two children and \$219 for one child.¹²

III. Discussion

Mr. M has appealed his child support order primarily because of his earnings. As the person who filed the appeal, Mr. M has the burden of proving by a preponderance of the

⁵ Exh. 6.

⁶ Exh. 5 at pg. 10.

⁷ Exh. 5 at pg. 7.

⁸ Exh. 7 at pg. 1.

⁹ Exh. 5 at pg. 8.

¹⁰ *Id.*

¹¹ Exhs. 8 & 9.

¹² CSSD calculated Mr. M's child support at \$219 per month, but that amount is only for one child. *See* Exh. 9. But Mr. M is obligated to pay support for two children, so the calculation results in the higher amount for two children. *See* Attachment A. Also, Mr. M is obligated to pay support for a prior child. CSSD's representative stated that his case for the older child was in the process of being modified and thereafter, Mr. M would most likely be obligated to pay \$274 per month. Submission to Record at pg. 1. The support amount for the prior child was included in the calculation for C and J in order to avoid the necessity for further modification.

evidence that the Amended Administrative Child and Medical Support Order was issued in error.¹³

A parent is obligated both by statute and at common law to support his or her children.¹⁴ This obligation begins when the child is born, but by regulation, CSSD only 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).¹⁵ In this case, public assistance began to be paid for C and J in August 2010, so that is when Mr. M's obligation to pay support through CSSD begins.

CSSD correctly calculated Mr. M's 2010 child support at \$129 per month, based on his actual income for the year, and his 2011 child support at \$50 per month because he was incarcerated for most of the year and had no income from earnings.

CSSD's amended order did not include a 2012 calculation because it was issued in September 2011. After the hearing, CSSD was directed to prepare a calculation for 2012 and ongoing based on Mr. M's new employment, but the result – \$219 per month – was incorrect because it was for only one child.¹⁶ The correct amount for two children is \$296 per month.¹⁷

Mr. M objects to the use of his Native corporation dividends in the child support calculation. He argues that his dividends should not be included in his income because they are garnished for his support obligation for his prior child and he never sees that money.

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. The commentary to Civil Rule 90.3 specifically states that dividends are income to be included in a parent's child support calculation.¹⁸ Even though Mr. M does not receive those funds directly from his Native corporation, they are collected by CSSD to pay Mr. M's child support debt via a direct deposit made to his child support account. The payment reduces Mr. M's child support arrears and is recorded as coming from him, so his Native corporation

¹³ 15 AAC 05.030(h).

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ 15 AAC 125.105(a)(1)-(2).

¹⁶ *See* Exh. 9.

¹⁷ Attachment A.

¹⁸ Civil Rule 90.3, Commentary III.A.6.

dividends should be included in his income for the purpose of calculating his child support obligation to C and J.

IV. Conclusion

Mr. M is obligated to pay support in this case for two children, C and J. CSSD correctly calculated his 2010 obligation at \$129 per month for two children and his 2011 support amount at \$50 per month, both figures based on his actual income during those years. Mr. M's 2012 and ongoing child support amount is now correctly calculated at \$296 per month for two children (\$219 for one child), based on an estimate of his actual 2012 income. These figures should be adopted.

V. Child Support Order

- Mr. M is liable for child support for C and J of \$129 per month for August 2010 through December 2010; \$50 per month for all of 2011; and \$296 per month for two children (\$219 for one child), effective January 2012 and ongoing;
- All other provisions of the Amended Administrative Child and Medical Support Order dated September 28, 2011, remain in full force and effect.

DATED this 3rd day of February, 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 21st day of February, 2012.

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

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