

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

IN THE MATTER OF:)

J T. R)

OAH No. 11-0402-CSS

CSSD No. 001174506

DECISION AND ORDER

I. Introduction

The obligor, J T. R, has appealed an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on September 20, 2011. The obligee child is A, 3. The other party is A J. H.

The formal hearing was held on November 22, 2011. Mr. R appeared in person with counsel; Ms. H also appeared in person. Erinn Brian, Child Support Specialist, represented CSSD.

Based on the record and after careful consideration, Mr. R's child support is set at \$354 per month, effective May 1, 2012, and ongoing. CSSD's administrative child support orders in Mr. R's case have been superseded by court orders from March 2011 through April 2012. As a result, his administrative child support for that period of time is suspended.

II. Facts

A. Procedural History

Ms. H applied for public assistance on A's behalf on March 21, 2011.¹ CSSD initiated a child support action against Mr. R and subsequently issued an Administrative Child and Medical Support Order on May 23, 2011.² He requested an administrative review.³ Following the review, CSSD issued an Administrative Review Decision on September 20, 2011, affirming its earlier order that Mr. R pay ongoing child support of \$384 per month, with arrears of \$1,536 from March 2011 through June 2011.⁴ Mr. R appealed on October 11, 2011.⁵

¹ Exh. 8 at pg. 1.

² Exh. 1.

³ Exhs. 2-3.

⁴ Exh. 4.

⁵ Exh. 5.

B. Material Facts

Mr. R and Ms. H are the parents of A, who is nearly four years of age. The parties were cohabitating in early 2011. On March 15, 2011, Ms. H obtained a 20-day Ex-Parte Domestic Violence Order (DVO) against Mr. R. She subsequently applied for public assistance on A's behalf on March 21, 2011.⁶ After a hearing held on April 1, 2011, the court issued a long-term (one year) DVO against Mr. R. The order awarded temporary custody of A to Ms. H and granted Mr. R visitation.⁷ Following another hearing on April 28, 2011, the court wrote and adopted an addendum that amended the one year DVO by ordering, among other things, that Mr. R pay one-half of an outstanding daycare bill and that he continue to pay the custodian's rent.⁸

At some point soon after the court issued the long-term domestic violence orders, Mr. R returned to the family home. While he lived in the family home, Mr. R paid rent on a monthly basis of \$1,250 per month, through July 2011. About August 1, 2011, Mr. R moved to the Big Lake area and stayed with his mother, D T. During August and September 2011, the parties shared custody of the child, each having approximately 50% of the time.⁹ From October 2011 forward, Ms. H assumed primary custody of the child. Mr. R's attorney indicated that there is ongoing litigation in the Superior Court that addresses the issues of custody, visitation and support, as between Mr. R and Ms. H.

Mr. R's total 2011 income is unknown. However, data provided by the Alaska Department of Labor and Workforce Development indicates that in 2008, Mr. R earned \$23,875.93; in 2009, he earned \$24,780.43; and in 2010 he earned \$21,440.12.¹⁰ For the three years, Mr. R's earnings averaged \$23,365.49.¹¹ A child support calculation made using this average income figure equals \$354 per month.¹² This ongoing amount should be effective as of May 1, 2012.

III. Discussion

Mr. R requested the formal hearing in this matter. As the person who filed the appeal, he

⁶ Exh. 7.

⁷ Custodian's Exh. B, pages unnumbered, received November 22, 2011.

⁸ *Id.*

⁹ Exh. D. at pg. 1.

¹⁰ Exh. 6 at pg. 1.

¹¹ $\$23,875.93 + \$24,780.43 + \$21,440.12 = \$70,096.48 \div 3 = \$23,365.49.$

¹² Attachment A.

has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.¹³

A. Time Period Support Obligation Is Effective

A parent is obligated both by statute and at common law to support his or her children.¹⁴ In cases established by CSSD, the agency 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 children, up to six years prior to the date the action was initiated.¹⁵

Ms. H began receiving public assistance for A on March 21, 2011.¹⁶ CSSD began collecting support from Mr. R as of March 1, 2011, but in this administrative child support action, Mr. R is not liable for support until May 1, 2012.

This is an establishment case in which CSSD initiated a child support action against Mr. R at about the same time the Superior Court entered one short-term (20 days) domestic violence order (DVO), and at least two long-term (one year) DVO's against Mr. R. All three orders granted Ms. H temporary custody of A. The first long-term DVO did not address child support, but the second long-term order, issued on April 29, 2011, directed Mr. R to pay one half of an outstanding daycare bill, and also ordered him to continue paying rent on the custodian's residence.¹⁷ The addendum to the second DVO is a child support order which the administrative agency and the undersigned administrative law judge cannot disturb.

Even if the addendum were not considered a child support order, the Superior Court's long-term order supersedes CSSD's administrative order and cannot be modified by CSSD or the administrative law judge until it expires.¹⁸ For practical purposes, this means that any administrative child support order in Mr. R's case may not take effect until May 1, 2012, following the expiration of the second long-term DVO on April 29, 2012. This is consistent with CSSD's treatment of long-term DVO's in establishment cases. CSSD simply excludes periods of time covered by domestic violence orders in its determination of a monthly support obligation and the obligor's total arrears due. In this case, because orders issued by the Superior Court

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. 7.

¹⁷ Custodian's Exh. B.

¹⁸ *See* AS 25.27.180(a).

cover the time period from March 15, 2011 through April 29, 2012, CSSD may not establish Mr. R's child support obligation for that period of time. Therefore, the administrative child support order may not take effect until May 1, 2012.

B. Child support calculation

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", minus mandatory deductions.

Mr. R's current income is unknown. For the three years from 2008 through 2010, Mr. R's earnings averaged \$23,365.49.¹⁹ The commentary to Civil Rule 90.3 specifically allows CSSD to use an obligor's average income for child support calculations.²⁰ A child support calculation made using this average income figure equals \$354 per month.²¹ This amount should be effective as of May 1, 2012.

IV. Conclusion

Mr. R met his burden of proving that CSSD's Administrative Review Decision was incorrect. The Superior Court addressed his support obligation for the period from March 2011 through April 2012, so he is not liable for support in this administrative child support action during that period of time. As of May 1, 2012, his child support obligation is correctly calculated pursuant to Civil Rule 90.3 at \$354 per month; this figure should be adopted. There is no variance under Civil Rule 90.3(c).

V. Child Support Order

- Mr. R is not is liable for child support in this administrative child support action from March 2011 through April 2012 – the Superior Court has addressed his support obligation during that period of time;
- Mr. R is liable for support in the amount of \$354 per month, effective May 1, 2012, and ongoing;
- All other provisions of the Administrative Review Decision dated September 20, 2011, remain in full force and effect.

¹⁹ $\$23,875.93 + \$24,780.43 + \$21,440.12 = \$70,096.48 \div 3 = \$23,365.49.$

²⁰ Civil Rule 90.3, Commentary III.E. This provision of the Rule specifically addresses using average income figures during periods of erratic income, but it is reasonable also to use an average income amount in order to ascertain an obligor parent's general earnings history.

²¹ Attachment A.

DATED this 1st 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 within 30 days after the date of this decision.

DATED this 18th 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: 06/01/2012 Case Number: 001174506 Tax Year: 2012

Paying Parent Name:

Annual Gross Income

Wages subject to FICA	\$23,365.49
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
Total Taxable Gross Income:	\$24,539.49
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
Total Non-taxable Gross Income:	\$0.00

Monthly Allowable Deductions

Federal Income Tax	\$154.45
FICA	\$110.01
Supplemental Benefits System	\$0.00
Retirement	\$0.00
Union Dues	\$0.00
SUI (Unemployment Insurance)	\$11.29
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: \$24,539.49 TOTAL MONTHLY DEDUCTIONS: \$275.75

Adjusted Annual Income \$21,230.49

Annual Child Support Payment (without credits)

1 Child \$4,246.10

Monthly Child Support Payments without Credits/ Debits

1 Child \$354.00

Monthly Medical Credit \$0.00

ATTACHMENT A