

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

IN THE MATTER OF:)

E L. L)

OAH No. 11-0448-CSS

CSSD No. 001167485

DECISION AND ORDER

I. Introduction

E L. L has appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 19, 2011. The obligee children are M, 7, K, 5, E, 3, and X, 1. The other party and custodian of record is M D. A.

The formal hearing was held on January 19, 2012. Both parties appeared in person with counsel. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, Mr. L is not liable for supporting X in this administrative child support action until July 2010. Thus, Mr. L's child support obligation is set at \$1,522 per month for three children from April 2010 through June 2010; \$1,660 per month for four children from July 2010 through December 2010; \$1,521 per month for four children for January and February 2011; and \$1,030 per month for four children from March 2011 through May 2011.

In the parties' custody litigation the court issued a child support order for Mr. L effective June 1, 2011, so the court order replaces this administrative order as of that date regarding his ongoing support obligation. Also, the court granted him a credit with CSSD for rent payments he made totaling \$3,652.84 after the parties separated, so CSSD is obligated to give him the credit. Finally, Mr. L has not shown that he is entitled to a variance in the support amounts calculated under the good cause provisions of Civil Rule 90.3(c).

II. Facts

A. Procedural History

Ms. A applied for child support services for the three older children on April 19, 2010.¹ The parties' youngest child, X, was born on April 25, 2010; Ms. A applied for services for that child on July 8, 2010.²

The parties were not married. Ms. A filed a custody action in the Superior Court sometime in 2010. After a hearing on May 10-11, 2011, the court issued Findings of Fact and Conclusions of Law on June 14, 2011. The court awarded the parties 50/50 physical custody of the children and set Mr. L's child support amount, effective June 1, 2012.³

Paternity of the three older children was previously established by virtue of Mr. L's name being on their birth certificates.⁴ CSSD determined Mr. L's paternity of the parties' youngest child by genetic testing and issued an order establishing his paternity of X on October 21, 2010.⁵ CSSD initiated a child support action, which culminated in the Division issuing an Amended Administrative Child and Medical Support Order on November 8, 2011.⁶ That order set Mr. L's support arrears for the period from April 2010 through May 2012 at \$21,694, based on a monthly support amount of \$1,656 per month.⁷ Mr. L appealed.⁸

B. Material Facts

1) Rent credit

Mr. L and Ms. A separated at the end of February 2010. Ms. A remained in the family home with the parties' four children and maintained primary physical custody into December 2010. Although Mr. L vacated the family home when he and Ms. A separated, he paid the \$1,490 per month rent on the residence for March and April 2010.⁹ In May 2010, he paid partial

1 Exh. 1.
2 Exh. 3.
3 Exh. 10.
4 See Exh. 1; see also CSSD's Submission to Record dated January 23, 2012.
5 Exhs. 4-8.
6 Exh. 15.
7 *Id.*
8 Exh. 7.
9 Exh. 2 at pgs. 14-15.

rent of \$672.84 and \$24.08 toward the utility bill.¹⁰ The total amount of rent Mr. L paid for Ms. A and the children was \$3,652.84.¹¹

The court order issued after the parties' custody trial includes a finding that Mr. L is entitled to a credit for those payments. CSSD's Amended Administrative Child and Medical Support Order credited him only with \$1,490 for the April 2010 payment.¹²

2) Shared custody

On December 7, 2010, the court issued an oral order from the bench for the parties to begin sharing custody of the children. Using Mr. L's work schedule as a guide, the court directed the parties to transfer custody of the children back and forth every three days, and within Mr. L's three days, the court awarded him two overnights with the children.¹³ In a standard 30-day time period containing five visitation events for each parent, Mr. L would thus have the children for ten overnights, or 33.3% shared custody, and Ms. A would have them for 20 overnights, which equals 66.7% shared custody.¹⁴ For purposes of calculating Mr. L's child support obligation, shared custody became effective as of January 2011.

On February 28, 2011, the court issued another oral order for the parties to begin sharing custody on a 50/50 basis, with the children to be exchanged every three days.¹⁵ That order remained in place for the remainder of the time at issue in this administrative child support matter. The court issued its Findings of Fact and Conclusions of Law on June 14, 2011, along with a child support order effective June 1, 2011.¹⁶

3) The parties' incomes

Mr. L is employed full-time for a local retail store. In 2010, he earned \$76,159.53.¹⁷ When the PFD value of \$1,281 is added, his total income from all sources for that year was

¹⁰ Exh. 2 at pg. 16; Exh. 18 at pg. 3.

¹¹ $\$1,490 \times 2 = \$2,980 + \$672.84 = \$3,652.84$.

¹² Exh. 15 at pg. 11.

¹³ Exh. 12 at pgs. 16-17.

¹⁴ $10 \div 30 = 33.3\%$; $20 \div 30 = 66.7\%$.

¹⁵ Exh. 12 at pgs. 12-14. The court's order is not specifically set out in the log notes from that hearing, but the parties agree that was the essence of the judge's order.

¹⁶ Exh. 10.

¹⁷ Exh. 13 at pg. 15.

\$77,440.53.¹⁸ Using that figure in a primary custody calculation results in him having a support obligation of \$1,660 per month for four children and \$1,522 for three children.¹⁹

In 2011, Mr. L received \$74,931.39 from his employment.²⁰ Adding the PFD of \$1,174 yields total income from all sources of \$76,105.39 and a primary custody child support calculation of \$1,667 per month for four children.²¹ This information will be used to determine Mr. L's support obligation for the shared custody periods beginning in January 2011.

In 2011, Ms. A was also employed. She received \$400 from one job during the first quarter of 2011, then \$9,337.50 through the end of the year from her second job.²² If she was liable for paying child support based on primary custody, it would be \$294 per month for four children.²³ As with Mr. L, this information will be transferred into the shared custody calculations effective as of January 2011.

4) Child support calculations

The parties' respective primary custody obligations beginning January 2011 are inserted into shared custody calculations for 2011. They result in Mr. L being obligated to pay support of \$1,521 per month for January and February 2011, during the period covered by the court's first oral custody order in which he had 33.3% shared custody and Ms. A had 66.7% shared custody.²⁴ As of March 2011, when the court's 50/50 shared custody order took effect, Mr. L's child support obligation is \$1,030 per month, as previously calculated by CSSD after the formal hearing.²⁵ This amount is effective only through May 2011, as the court issued a child support order that took effect on June 1, 2011 and replaced CSSD's order.

III. Discussion

A. *Mr. L is Obligated to Pay Support for X from July 2010 forward*

Mr. L's first issue on appeal challenges CSSD's determination that he is liable for support for his youngest child, X, beginning in April 2010.

¹⁸ See Exh. 30 at pg. 2.

¹⁹ *Id.*

²⁰ Exh. 28.

²¹ Exh. 31 at pg. 2.

²² Exh. 27 at pg. 1; *see also* Exh. 29.

²³ Exh. 31 at pg. 3.

²⁴ Attachment A.

²⁵ Exh. 31 at pg. 1. CSSD's amount of \$1,029.58, has been rounded to the nearest dollar for convenience.

CSSD’s regulation 15 AAC 125.105(a)(2) states that when a child support obligation is “initiated by the custodial parent, the agency will establish arrears beginning as of the date the custodial parent most recently applied for the agency’s services”²⁶ In this case, Ms. A first requested child support services on April 19, 2010.²⁷ The application included only the parties’ oldest three children.²⁸ X, their youngest child, was born a few days later, on April 25, 2010, and began receiving medical assistance at that time.²⁹ However, Ms. A did not request child support services for X until July 8, 2010.³⁰ CSSD charged Mr. L with support for X from April 2010 forward, apparently because that is when the child began receiving medical assistance benefits.

When Ms. A applied for services for X, she was initiating the establishment of Mr. L’s administrative child support obligation for the child. The straightforward language of the regulation clearly indicates that under these circumstances, arrears for X do not accrue until July 2010. As a result, Mr. L is liable for supporting only the three older children in this administrative action from April 2010 through June 2010. His liability for supporting all four children commences in July 2010.

B. Mr. L is Entitled to Rent Credit

When Mr. L and Ms. A separated at the end of February 2010, they entered into an agreement in which he would continue to pay the rent for the family home while she and the children remained there. He paid a total of \$3,652.84 on their behalf for March, April and part of May 2010. After the parties’ custody trial, the court issued Findings of Fact and Conclusions of Law on June 14, 2011. The court’s findings include a paragraph that states “Mr. L shall receive a credit with CSSD for payments made in February through May 2010 for rent for the children.”³¹ CSSD’s Amended Administrative Child and Medical Support Order credited him only with \$1,490 for the April 2010 payment.³²

²⁶ 15 AAC 125.105(a)(2).

²⁷ Exh. 1.

²⁸ Exh. 1 at pg. 1.

²⁹ Exh. 11 at pg. 8.

³⁰ Exh. 3.

³¹ Exh. 10 at pg. 13 (emphasis added).

³² Exh. 15 at pg. 11.

CSSD's statute, AS 25.27.020(b), states that the division may give an 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.³³ The written portion of CSSD's order does not address Mr. L's request for the rent credit, but it appears CSSD did not credit him for the earlier months because he made those payments before Ms. A submitted her application for services. This would be consistent with AS 25.27.020(b).

In this case, Judge Michalski made the determination after the custody hearing that Mr. L is entitled to the rent credit, and clearly stated in his findings that the obligor "shall" receive the credit for the months of February through May 2010. CSSD is therefore bound by the court's order.³⁴ Mr. L is therefore entitled to a credit totaling \$3,652.84 for the rent he paid for Ms. A and the children for March, April and May 2010.

C. Child Support Calculations

Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated from his or her "total income from all sources," minus mandatory deductions. The mandatory deductions for federal taxes, Social Security and Medicare are calculated by CSSD's online child support calculator,³⁵ which assigns the highest, single person tax rate to the parent's gross income figure. Additional deductions include retirement contributions. A parent is entitled to a deduction for voluntary payments made into a retirement account up to the maximum figure of 7.5% of his or her gross wages, so long as the individual can provide proof of the payments.³⁶

Mr. L's and Ms. A's income information for the years 2010 and 2011 was received during the hearing process. CSSD used Mr. L's information to correctly calculate his primary custody support obligation for the children for 2010, and both parties' information to calculate 50/50 shared custody for 2011. However, this decision includes a finding that the parties exercised shared custody in a different percentage split for January and February 2011. Based on that finding, the ALJ prepared a child support calculation for those two months, attached at the end of this decision.

³³ AS 25.27.020(b).

³⁴ It should be noted that Mr. L did not request credit for February 2010, even though the judge ordered it, probably because the parties did not split until late that month.

³⁵ <http://www.childsupport.alaska.gov/>.

³⁶ Civil Rule 90.3(a)(1)(B).

Mr. L is obligated to pay support based on Ms. A having primary custody of the children for all of 2010. Mr. L's child support for 2010 is correctly calculated at \$1,522 per month for three children for April through June 2010, and \$1,660 per month for four children from July through December 2010.³⁷ CSSD used the gross income figure from his 2010 W-2, \$76,159.53.³⁸ CSSD did not include the maximum retirement deduction of 7.5% because Mr. L did not provide evidence that he paid that much into his retirement account. It appears that because Mr. L did make some retirement contributions,³⁹ CSSD used the same figure for the 2010 and 2011 calculations, apparently based on an estimate of the total amount he paid.⁴⁰

Mr. L's support obligation for 2011 is based on shared custody. Shared custody child support is calculated by determining each parent's primary custody child support obligation to the other parent, as if each parent had primary custody of the children. Pursuant to Civil Rule 90.3(b)(1), the figures are then inserted into a mathematical formula that determines the paying parent's shared custody child support amount.

CSSD correctly calculated Mr. L's support obligation at \$1,030 per month for four children during the period of time he and Ms. A shared custody of the children on a 50/50 basis, beginning in March 2011. The additional calculation for January and February 2011 has been correctly calculated at \$1,521 per month for four children for those two months, as shown in Attachment A.

D. Financial Hardship

The third issue in this case concerns whether Mr. L's child support obligation should be reduced because it causes him a financial hardship.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest

³⁷ Exh. 30 at pg. 2.

³⁸ Exh. 13 at pg. 15.

³⁹ See Exh. 2 at pgs. 2-5.

⁴⁰ Mr. L also did not establish that he paid the maximum 7.5% figure in 2011. He claimed a retirement deduction of \$5,504.76, Exh. 14 at pg. 13, but the maximum year-to-date deduction shown on his paystubs is \$1,650.83, which appears on the July 1, 2011 document. Exh. 13 at pg. 8.

injustice would result if the support award were not varied.”⁴¹ The existence of “unusual circumstances” may also provide sufficient basis for a finding of good cause to vary the calculated child support amount.⁴² It is appropriate to consider all relevant evidence in order to determine if the support amount should be lowered from the amount calculated pursuant to Civil Rule 90.3(a).⁴³

Based on the evidence in its entirety, Mr. L has not proven by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not reduced.

Mr. L provided a list of his household expenses, which shows that he and his significant other, C, have quite a bit of consumer debt, including two vehicle payments totaling nearly \$750 per month and at least five credit card or signature loan accounts with a total balance in excess of \$25,000.⁴⁴ Mr. L and C together earn nearly \$120,000. They have what appear to be typical household expenses, other than their consumer debt. Mr. L claimed that CSSD’s garnishment would cause him to lose his house, but other than his list of expenses, there is no evidence of that in the record. Also, Mr. L has not shown how he may have attempted to reduce his consumer debt in light of the support obligation. Mr. L’s consumer debt should not take precedence over his obligation to support his children.⁴⁵

Thus, although the establishment of this child support order has undoubtedly created financial stress for Mr. L, based on the totality of circumstances, Mr. L has not shown good cause for an adjustment of his support obligation under Civil Rule 90.3(c).

IV. Conclusion

Mr. L met his burden of proving by a preponderance of the evidence that CSSD’s Amended Administrative Child and Medical Support Order was incorrect.

Based on the date of Ms. A’s application for services for X, Mr. L is not liable for supporting X in this administrative child support action until July 2010. In light of this, Mr. L’s child support obligation is now correctly calculated to reflect both primary and shared physical custody of the children as follows: \$1,522 per month for three children from April 2010 through

⁴¹ Civil Rule 90.3(c).

⁴² Civil Rule 90.3(c)(1).

⁴³ Civil Rule 90.3, Commentary VI.B.

⁴⁴ Exh. 25.

⁴⁵ *See* *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

June 2010; \$1,660 per month for four children from July 2010 through December 2010; \$1,521 per month for four children for January and February 2011; and \$1,030 per month for four children from March 2011 through May 2011.

In addition, Mr. L is entitled to a rent credit totaling \$3,652.84, as directed by the Superior Court in its Findings of Fact and Conclusions of Law following the parties' custody litigation.

Mr. L has not established good cause for a variance based on Civil Rule 90.3(c). The child support calculations set forth in this decision are correct and should be adopted.

V. Child Support Order

1. Mr. L is not liable for support in this administrative child support action for his youngest child, X, until July 2010;
2. Mr. L is liable for child support for M, K, E and X as follows: in the amount of \$1,522 per month for three children from April 2010 through June 2010; \$1,660 per month for four children from July 2010 through December 2010; \$1,521 per month for four children for January and February 2011; and \$1,030 per month for four children from March 2011 through May 2011;
3. The Superior Court issued a child support order to take effect as of June 1, 2011, so ongoing support has been addressed by the court;
4. Mr. L is entitled to a total credit of \$3,652.84 to reflect the rent credit awarded to him and ordered by the Superior Court in its Findings of Fact and Conclusions of Law following the parties' custody litigation;
5. All other provisions of the Amended Administrative Child Support and Medical Support Order dated November 8, 2011, remain in full force and effect.

DATED this 11th day of April, 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 30th day of April, 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.]

SHARED CUSTODY CHILD SUPPORT GUIDELINES WORKSHEET

CASE NUMBER: 001 16 7485
 CUSTODIAN: M . D. A
 NON-CUSTODIAL PARENT: E . L. L.
 YEAR: 2011

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

	<u>A</u> <u>CUSTODIAN</u>	<u>B</u> <u>NON-CUSTODIAN</u>
1 Monthly child support per Primary custody calculation	<u>\$294.00</u>	<u>\$1,667.00</u>
2 Percentage of time child(ren) will be with each parent.	<u>67%</u>	<u>33%</u>
3 Multiply line 1A times 2B	<u>\$97.90</u>	
4 Multiply line 1B times 2A		<u>\$1,111.89</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>\$1,013.99</u>
6 Multiply line 5 by 1.5 (one line is left blank). This amount is the MONTHLY CHILD SUPPORT AMOUNT	<u>\$0.00</u>	<u>\$1,520.98</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>\$1,521</u>
MONTHLY CHILD SUPPORT AMOUNT TO BE PAID AFTER CREDIT/DEBIT:		
MONTHLY CHILD SUPPORT TO BE PAID BY:		<u>E . L. L.</u>