

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

IN THE MATTER OF:

F R. J

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OAH No. 12-0401-CSS
CSSD No. 001175188

DECISION AND ORDER

I. Introduction

F R. J appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 17, 2011. The obligee children are T, U, G and F. The other party is H P. J.

The formal hearing was held on October 29, 2012. Mr. J appeared in person; Ms. J participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, Mr. J's child support is set at \$2,486 per month for four children (\$2,279 for three children, \$1,864 for two children and \$1,381 for one child), effective April 2011, and ongoing. CSSD's Motion for Summary Adjudication filed on October 1, 2012, is denied as moot.

II. Facts

A. Procedural History

Ms. J applied for child support services and began receiving Medicaid benefits on behalf of the children in April 2011.¹ CSSD thereafter initiated an administrative child support action against Mr. J by requesting financial information from him, which he provided, and issuing an administrative child support order on behalf of the children.² Mr. J requested an administrative review of the order.³ On August 17, 2011, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. J's ongoing child support at \$2,792 per month, with arrears of \$7,869 for the period from April 2011 through August 2011.⁴ Mr. J filed a written appeal on

¹ Exh. 5 at pg. 9.

² Exhs. 1-3.

³ Exh. 4.

⁴ Exh. 5.

September 2, 2012.⁵ In response, CSSD filed a Motion for Summary Adjudication on October 1, 2012, asserting that it was entitled to judgment as a matter of law because Mr. J's appeal was untimely, having been filed more than one year after the amended order was issued.

A hearing was convened on Mr. J's appeal, at which time evidence was taken on both the issue of timeliness and Mr. J's ability to pay support. After the hearing, CSSD conceded that its research revealed Mr. J had, in fact, submitted a timely appeal in person at CSSD's offices on September 2, 2011, but the agency does not know what happened to the request. His appeal therefore was timely, so this decision will address the merits of his case.

B. Material Facts

Mr. J is a miner; he works for No Name. In 2011, he earned \$109,242.02.⁶ This figure was verified by his 2011 tax return.⁷ Mr. J also received a \$300 dividend.⁸ Inserting his 2011 total income figure, plus the 2011 PFD of \$1,174, into CSSD's online child support calculator⁹ results in a support amount of \$2,486 per month for four children (\$2,279 for three children, \$1,864 for two children and \$1,381 for one child).¹⁰

Thus far in 2012, the Alaska Department of Labor and Workforce Development reports that Mr. J has earned \$70,089.81 for the first three quarters of the year. An annual amount extrapolated from that figure is \$93,453.08.¹¹ As with 2011, the PFD is included, but the 2012 amount was \$878.¹² Also, CSSD assumed that Mr. J would receive the \$300 dividend in 2012.¹³ These are the figures CSSD used to estimate his support obligation for 2012 at \$2,150 per month for four children (\$1,971 for three children, \$1,612 for two children and \$1,194 for one child).¹⁴ The 2012 figure calculated from Mr. J's estimated 2012 income is 13.5% lower than the calculation for 2011.

⁵ Exh. 6.

⁶ Affidavit of Erinn Brian, Child Support Specialist, dated November 19, 2012. This information was obtained from the Alaska Department of Labor and Workforce Development.

⁷ See Exh. 8 at pg. 1.

⁸ Exh. 8 at pg. 1.

⁹ <http://www.childsupport.alaska.gov/>

¹⁰ Exh. 9 at pg. 1.

¹¹ $\$70,089.81 \div 3 = \$23,363.27 \times 4 = \$93,453.08$.

¹² <http://www.pfd.state.ak.us/>

¹³ See Exh. 9 at pg. 2.

¹⁴ Exh. 9 at pg. 2.

III. Discussion

A. *Controlling law*

A parent is obligated both by statute and at common law to support his or her children.¹⁵ In general, this obligation begins when the child is born.¹⁶ However, in administrative child support cases, CSSD can collect support only from the date the custodial parent requested child support services, or the date public assistance, Medicaid or foster care payments were initiated on behalf of the child(ren).¹⁷ In this case, Ms. J applied for and began receiving Medicaid benefits on behalf of T, U, G and F in April 2011, so Mr. J is thus obligated to pay support through CSSD as of that month.

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.¹⁸ Mr. J filed the appeal, so he must prove by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order is incorrect.¹⁹

B. *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 such as taxes and Social Security. CSSD calculated Mr. J's child support from his total 2011 wages, as reported by the Alaska Department of Labor and Workforce Development, and a \$300 dividend that was reported on his tax return.²⁰ Adding the PFD of \$1,174 results in total income from all sources of \$109,242.02.²¹ Mr. J's figures for 2011 result in a support amount of \$2,486 per month for four children (\$2,279 for three children, \$1,864 for two children and \$1,381 for one child).²²

For subsequent years after the initial support amount has been determined, CSSD's regulations state that the support amount will be the same as first calculated, unless a "material change in circumstances" has been shown.²³ A material change in circumstances "will be

¹⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁶ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁷ 15 AAC 125.105(a)(1)-(2).

¹⁸ 15 AAC 05.030(h).

¹⁹ 2 AAC 64.290(e).

²⁰ Exh. 8 at pg. 1.

²¹ Exh. 9 at pg. 1.

²² Exh. 9 at pg. 1.

²³ 15 AAC 125.105(e). A "material change in circumstances" is the benchmark for modifying a child support obligation. *See* AS 25.27.190(e).

presumed” if the new child support calculation is more than a 15% change from the previous amount.²⁴ Since the calculation for 2011 was \$2,486, a child support calculation more than \$373 higher or lower would be sufficient to change the amount charged for 2012.²⁵ Thus, if the new amount were \$2,113 or lower, that amount could be charged instead.²⁶ CSSD calculated a 2012 support amount at \$2,150 per month for four children, so that figure is not low enough to use as the 2012 child support amount; the 2011 figure is therefore the correct one to use.

IV. Conclusion

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

The 2011 support amount has been corrected to \$2,486 per month for four children (\$2,279 for three children, \$1,864 for two children and \$1,381 for one child). CSSD calculated a 2012 amount, but it was not at least 15% lower than the 2011 figure and thus does not constitute a material change in circumstances. Therefore, the 2011 figure should be used for both years immediately at issue and for the ongoing amount, as well.

This child support should be adopted as of April 2011, when Ms. J applied for child support services and began receiving Medicaid benefits on behalf of the children.

There was no variance requested or granted under Civil Rule 90.3(c) in this appeal.

V. Child Support Order

1. CSSD’s Motion for Summary Adjudication is denied as moot;
2. Mr. J is liable for child support for T, U, G and F in the amount of \$2,486 per month for four children (\$2,279 for three children, \$1,864 for two children and \$1,381 for one child);
3. All other provisions of the Amended Administrative Child and Medical Support Order dated August 17, 2011 remain in full force and effect.

DATED this 10th day of December, 2012.

Signed

Kay L. Howard
Administrative Law Judge

²⁴ Civil Rule 90.3(h)(1).

²⁵ \$2,486 x 15% = \$372.90.

²⁶ \$2,486 - \$373 = \$2,113.

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 28th day of December, 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.]