

**BEFORE THE NO OFFICE OF ADMINISTRATIVE HEARINGS  
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF:

L O. C

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OAH No. 12-0461-CSS  
CSSD No. 001180505

**AMENDED DECISION AND ORDER**

**I. Introduction**

L O. C appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 23, 2012. The obligee children are B, 19, K, 17, and L, 14. The other party to the case is N N.

The formal hearing was held on October 15, 2012. Mr. C appeared in person with counsel; Ms. N participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

The proposed decision was issued on December 3, 2012. None of the parties filed a Proposal for Action, so the decision was adopted as final on December 21, 2012. Mr. C subsequently filed an appeal in the Superior Court, which remanded the decision to the Office of Administrative Hearings (OAH) on September 24, 2013, with directions to issue an Amended Decision and Order no later than 45 days after receiving the remand. CSSD copied the remand order to the OAH by email on September 30, 2013. Thus, any Amended Decision and Order must be issued no later than November 14, 2013. Also, there is no Proposal for Action stage after a remand from the court. This document constitutes the final Amended Decision and Order contemplated by the court's remand.

Based upon the record and after careful consideration, Mr. C's child support is set at \$1,323 per month for three children for November and December 2011; \$940 per month for two children (\$696 for one child) for January through December 2012; and \$660 per month for two children (\$489 for one child), effective January 2013, and ongoing. He is entitled to credit for direct payments made to Ms. N in the total amount of \$4,650 for the period from November 2011 through June 2012. His request for credits for payments made directly to B and for providing a cell phone is denied.

**II. Facts**

*A. Procedural History*

Ms. N applied for child support services in her state of residence in November 2011.<sup>1</sup> CSSD thereafter initiated an administrative child support action against Mr. C by requesting financial information from him and issuing an administrative child support order on behalf of the children.<sup>2</sup> Mr. C requested an administrative review of the order and submitted income information.<sup>3</sup> On August 23, 2012, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. C’s ongoing child support at \$1,082 per month, with arrears of \$6,652 for the period from November 2011 through August 2012.<sup>4</sup> Mr. C appealed on September 18, 2012.<sup>5</sup> Prior to the hearing, CSSD obtained Mr. C’s income and wage data from the No Department of Labor and Workforce Development.<sup>6</sup>

*B. Material Facts*

Mr. C and Ms. N were divorced five or more years ago in the country of Ghana. They have three children together, B, K, and L. B graduated from high school in 2011, apparently in the spring, and reached the age of 18 on December 6, 2011. K will reach the age of 18 on December 25, 2013, but it is not known when he will graduate from high school.<sup>7</sup>

1. Mr. C’s Income

Mr. C works in the personal care services industry. He has a history of working for multiple employers at the same time. From 2008 through 2011, his total gross earnings from wages were as follows:

2008	\$51,133.28
2009	\$45,183.48
2010	\$44,552.74
2011	\$59,419.06 <sup>8</sup>

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exhs. 2-4.  
<sup>3</sup> Exhs. 5-6.  
<sup>4</sup> Exh. 7.  
<sup>5</sup> Exh. 8.  
<sup>6</sup> Exh. 9.  
<sup>7</sup> CSSD’s Pre-Hearing Brief at pg. 1.  
<sup>8</sup> Exh. 9 at pgs. 1-2.

Mr. C's total income for 2011 results in a child support calculation of \$1,323 per month for three children (\$1,082 for two children and \$802 for one child).<sup>9</sup> Mr. C has not contested the figures for 2011.

Mr. C had two employers in 2012. The first, a company called No Name,<sup>10</sup> had a contract with No Name Hospital to provide "lift team" services for hospital residents. Mr. C worked on this team at No Name. However, the hospital did not renew its contract with No Name, so the business did not have any more work for him after July 2012. Mr. C received his last paycheck from No Name in July 2012, and he quit officially in September 2012. He earned a total of \$16,048.88 from the company in 2012.<sup>11</sup>

Mr. C's other employer in 2012 was No Name Hospital, where he also started working in mid-2011. His paystubs showed he was working three 12-hour shifts per week. His base pay was \$15.96 per hour, straight time, but he worked primarily on the night shift, which paid \$19.47 per hour.<sup>12</sup> Also, he worked a significant number of weekend night shifts, for which he was paid \$21.47 per hour.<sup>13</sup> Mr. C's earnings history from the No Department of Labor and Workforce Development indicates he earned \$34,483.36 from No Name Hospital in 2012.<sup>14</sup> When this figure is added to his 2012 income from No Name, Mr. C's earnings in 2012 totaled \$50,532.24.<sup>15</sup> Adding the 2012 PFD yields a gross income figure of \$51,410.24 for 2012.<sup>16</sup> When inserted into CSSD's online child support calculator, the result is a child support calculation of \$940 for two children (\$696 for one child) for all of 2012.<sup>17</sup>

Mr. C remained employed at No Name Hospital in 2013. Department of Labor records indicate he earned \$24,946.71 for the first three quarters of the year.<sup>18</sup> CSSD divided this figure by three to determine his average income per quarter was \$8,315.57, then multiplied that number by four quarters to estimate his total 2013 income from No Name Hospital would be

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<sup>9</sup> Exh. 1B at pg. 1.

<sup>10</sup> Also known as No Name, Inc. in Alaska Department of Labor and Workforce Development records. *See* Exh. 1A.

<sup>11</sup> *See* Exh. 1A.

<sup>12</sup> Obligor's Exh. 6 at pg. 1. Mr. C's figures show he had earned only about 4.3% of his 2012 year-to-date income at his base pay rate:  $\$1,279.08 \div 29870.10 = .0428 \times 100\% = 4.28\%$ .

<sup>13</sup> Obligor's Exh. 6 at pg. 1.

<sup>14</sup> Exh. 1A.

<sup>15</sup> *Id.*

<sup>16</sup> Exh. 1B at pg. 2.

<sup>17</sup> *Id.*

<sup>18</sup> Exh. 1A.

\$32,262.28.<sup>19</sup> Mr. C also had one quarter of earnings from K K of \$1,456, so adding that to the obligor's No Name income results in total estimated earnings of \$34,718.28.<sup>20</sup> Adding the 2013 PFD yields a gross income figure of \$35,618.28 for 2013.<sup>21</sup> When inserted into CSSD's online child support calculator, the result is a child support calculation of \$660 per month for two children (\$489 for one child) for 2013 and ongoing.<sup>22</sup>

2. Credit for Direct Support

Mr. C verified, and CSSD accepted, that he had been paying support directly to the custodian during the early months at issue in this appeal. From November 2011 through June 2012, he made payments totaling \$4,650 to Ms. N.<sup>23</sup> CSSD has credited him with those payments.<sup>24</sup>

In addition to the funds he sent to Ms. N, Mr. C sent money directly to his oldest son, B. Mr. C sent B a total of \$850 on the following dates and is requesting a credit against his child support obligation for these funds:

12/14/11	\$350
02/02/12	\$150
03/27/12	\$200
05/17/12	\$150 <sup>25</sup>

Mr. C has also been providing a cell phone to B and his brothers. The obligor testified that he decided to get it for them after having difficulty reaching them by calling Ms. N – she usually told him they were not available. He testified the custodian told him if he wanted to contact the children he could get them a phone, so he did, and Ms. N did not complain about it. Mr. C's monthly payments for the cell phone totaled \$1,001.66 for the one-year period from September 2011 through September 2012.<sup>26</sup> The custodian verified she told Mr. C to get the telephone for the boys because he was only sending \$450 per month and it was not enough money to provide for them.

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<sup>19</sup> Exh. 1B at pg. 3.

<sup>20</sup> Attachment A. This calculation is not to be confused with Attachment A that was attached to the original Decision and Order. That calculation was for 2012; this Attachment A is a calculation for 2013.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* This calculation added Mr. C's K K income to his No Name earnings. CSSD's calculation of \$635 per month for two children did not include the K K figure in Mr. C's earnings. *See* Exh. 1B at pg. 3.

<sup>23</sup> Obligor's Exh. 5.

<sup>24</sup> *See* Exh. 7 at pg. 9.

<sup>25</sup> Exh. 9 at pgs. 1-2.

<sup>26</sup> Obligor's Exh. 7.

### III. Discussion

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.<sup>27</sup> Mr. C 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.<sup>28</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>29</sup> In general, this obligation begins when the child is born.<sup>30</sup> 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).<sup>31</sup> In this case, Ms. N applied for and began receiving Medicaid benefits on behalf of B, K and L in November 2011, so Mr. C is thus obligated to pay support through CSSD as of that date. However, his obligation to support B in this case only covers the time period from November 2011 through December 2011 because B emancipated in December 2011. Therefore, all of the calculations beginning with January 2012 are for two children, K and L, rather than three. Also, K will be turning 18 at the end of December 2013, but it is not known if he has graduated from high school, so whether Mr. C has an obligation to support K after December 2013 cannot be answered here. The parties will have to address that issue with CSSD.

#### A. *Child Support Calculation*

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. C's child support from his total 2011 earnings of \$59,419.06, plus the PFD, for total annual income of \$60,593.06.<sup>32</sup> This results in a child support calculation of \$1,323 per month for three children and \$1,082 per month for two children (\$802 for one child).<sup>33</sup> CSSD confirmed that calculation after the court remanded the decision back to the OAH, and Mr. C does not object to that calculation.<sup>34</sup>

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<sup>27</sup> 15 AAC 05.030(h).

<sup>28</sup> 2 AAC 64.290(e).

<sup>29</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>30</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

<sup>31</sup> 15 AAC 125.105(a)(1)-(2).

<sup>32</sup> Exh. 7 at pg. 8.

<sup>33</sup> Exh. 7 at pg. 8.

<sup>34</sup> Exh. 1B at pg. 1.

Mr. C's appeal asserts that CSSD incorrectly determined his annual income for child support purposes. He argued that he should not have to pay support based on income from two jobs, when in actuality he only has one job. CSSD accepted Mr. C's argument and recalculated his child support for 2012 and 2013. His child support is now correctly calculated at \$940 per month for two children (\$696 for one child) for 2012; and \$660 per month for two children (\$489 for one child), effective January 2013, and ongoing. These figures are correct and should be adopted.

*B. Direct Credit*

CSSD 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 payments were not made before the first date support is due in the administrative child support action.<sup>35</sup> An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.<sup>36</sup>

Based on Mr. C's testimony and the copies of the wire transfers, Mr. C met his burden of proof and is entitled to the direct credit totaling \$4,650 for the money he sent directly to Ms. N. However, he is not entitled to a direct credit for the payments made directly to B. None of the payments to B constitute child support. Payments become due and payable on the first of the month, so Mr. C was still obligated to support B for December 2011. B emancipated five days later, on December 6, 2011, so thereafter Mr. C was no longer liable for B's support. Mr. C sent \$350 to B on December 14, 2011, eight days later. Considering the evidence as a whole, it appears more likely that the money Mr. C sent to B was actually a birthday present. It was nearly \$200 more than the later amounts Mr. C sent to his son, and it was made close to B's birthday.

Mr. C is also not entitled to a credit against his child support obligation for purchasing and paying for the cell phone he gave the boys. Mr. C testified that he purchased the phone for them in order to facilitate his contact with the children, not to provide for their support. Although Ms. N told Mr. C to get the phone, it was out of frustration because Mr. C was not sending her enough money and she could not afford one. She did not consider it child support. To give Mr. C credit for the cell phone leads to the same result for Ms. N – a reduction in the funds that should be available to her for the children's support. The No Supreme Court has

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<sup>35</sup> AS 25.27.020(b).

<sup>36</sup> *Id.*

stated that it is the custodial parent’s prerogative “to decide how to spend the support money on the children.”<sup>37</sup> A non-custodial parent should not be able to overrule the decisions of the custodial parent. To give Mr. C credit for the phone would in essence credit him for something he purchased as a convenience for himself.

#### **IV. Conclusion**

Mr. C met his burden of proving by a preponderance of the evidence that CSSD’s Amended Administrative Child Support and Medical Support Order was incorrect. The 2011 support amount was correct at \$1,323 per month for three children (\$1,082 for two children; \$802 for one child). The parties’ oldest child, B, emancipated in December 2011, so Mr. C is not liable for B’s support as of January 2012. Mr. C’s 2012 income has been corrected and his 2013 income has been correctly estimated. Thus, his child support is now correctly calculated for all the years at issue and should be adopted.

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

#### **V. Child Support Order**

1. Mr. C is liable for child support for B, K and L in the amount of \$1,323 per month for three children for November and December 2011; \$940 per month for two children (\$696 for one child) for 2012; and \$660 per month for two children (\$489 for one child), effective January 2013, and ongoing;

2. If CSSD has not already credited the obligor for the direct payments discussed in this decision, Mr. C is entitled to credit for direct payments made to Ms. N in the total amount of \$4,650 for the period from November 2011 through June 2012;

3. All other provisions of the Amended Administrative Child Support and Medical Support Order dated August 23, 2012 remain in full force and effect.

DATED this 13<sup>th</sup> day of November, 2013.

*Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

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

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<sup>37</sup> *CSSD v. Campbell*, 931 P.2d 416, 420 (Alaska 1997).