

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

IN THE MATTER OF:)

L O. C)

OAH No. 12-0461-CSS

CSSD No. 001180505

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, 18, K, 16, and L, 13. 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.

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; and \$972 per month for two children (\$720 for one child), effective January 2012, 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 2011.¹ 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.² Mr. C requested an administrative review of the order and submitted income information.³ 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

¹ Exh. 1.

² Exhs. 2-4.

³ Exhs. 5-6.

of \$6,652 for the period from November 2011 through August 2012.⁴ Mr. C appealed on September 18, 2012.⁵ Prior to the hearing, CSSD obtained Mr. C's income and wage data from the Alaska Department of Labor and Workforce Development.⁶

B. Material Facts

Mr. C and Ms. N were divorced five 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 00/00/11.

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 ⁷

Mr. C's half-year earnings in 2012 were \$30,335.08, which, for purposes of analyzing his employment data, is consistent with and on par to meet his total 2011 income.⁸

Since the second half of 2011, Mr. C has had two employers. The first, a company called No Name, had a contract with No Name 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 as of July 2012, the business did not have any more work for him. His last paycheck from No Name was in July 2012; he quit officially in September 2012 and earned a total of \$12,841.13 from the company in 2012.⁹

Mr. C's current employment is at No Name Hospital, where he started working in mid-2011. He works three 12-hour shifts per week. His base pay is \$15.96 per hour, straight time, but he works primarily on the night shift, which pays \$19.47 per hour.¹⁰ Also, he works a

⁴ Exh. 7.

⁵ Exh. 8.

⁶ Exh. 9.

⁷ Exh. 9 at pgs. 1-2.

⁸ Exh. 9 at pg. 1.

⁹ \$6,108.88 + \$6,732.25 = \$12,841.13. See Exh. 8 at pg. 3.

¹⁰ Obligor's Exh. 6 at pg. 1. Mr. C's last year-to-date figures show he had earned only about 4.3% of his total year-to-date income at his base pay rate: $\$1,279.08 \div 29870.10 = .0428 \times 100\% = 4.28\%$.

significant number of weekend night shifts, for which he is paid \$21.47 per hour.¹¹ His year-to-date earnings were \$29,870.10 as of the pay period ending October 6, 2012.¹² Dividing this total number by nine months equals an average of \$3,318.89 per month, which, when multiplied by 12 months, equals an estimated annual income of \$39,826.67 from No Name Hospital.¹³

When Mr. C was asked if he had been looking for another part-time job since leaving No Name, he indicated that he had not, and that he had no current plans to secure other employment. He could not specifically state why, other than giving a vague answer about possibly moving closer to his children. If Mr. C remains at No Name Hospital and does not get another part-time job, his actual annual income for 2012 is estimated at \$52,667.80, which is the total of his No Name earnings of \$12,841.13 plus the \$39,826.67 he is expected to earn at No Name Hospital.

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.¹⁴ CSSD has credited him with those payments.¹⁵

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 ¹⁶

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

¹¹ Obligor’s Exh. 6 at pg. 1.

¹² Obligor’s Exh. 6 at pg. 1.

¹³ $\$29,870.10 \div 9 = \$3,318.89 \times 12 = \$39,826.67$. Wage data from the Alaska Department of Labor indicates that during the one-year period from the third quarter of 2011 through the second quarter of 2012, Mr. C had earned \$34,421 at No Name Hospital, so it appears his income there is increasing. See Exh. 9 at pg. 1.

¹⁴ Obligor’s Exh. 5.

¹⁵ See Exh. 7 at pg. 9.

¹⁶ Exh. 9 at pgs. 1-2.

September 2011 through September 2012.¹⁷ 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.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁸ In general, this obligation begins when the child is born.¹⁹ 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).²⁰ 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 the oldest child emancipated in December 2011. All of the calculations beginning with January 2012 are thus for two children, K and L, rather than three.

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.²¹ 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.²²

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 \$60,593.06.²³ 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).²⁴ CSSD carried the two-child amount over into 2012.²⁵

¹⁷ Obligor's Exh. 7.

¹⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁹ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

²⁰ 15 AAC 125.105(a)(1)-(2).

²¹ 15 AAC 05.030(h).

²² 2 AAC 64.290(e).

²³ Exh. 7 at pg. 8.

²⁴ Exh. 7 at pg. 8.

²⁵ Exh. 7 at pg. 9.

Mr. C's appeal asserts that CSSD incorrectly determined his annual income for child support purposes. Mr. C argues that because his job at No Name ended in mid-2012, he will not earn the over \$60,000 figure that CSSD attributed to him for the year. He claims that his child support should be calculated from his annual income at No Name Hospital because it is his only job. Mr. C estimated his annual income from his wages there will be \$32,864.40 in 2012, plus the PFD of \$848, for total annual income of \$33,742.40. This results in a child support calculation of \$625 per month for two children (\$463 for one child).²⁶

Mr. C's argument that his child support should be calculated from an annual income figure of just over \$32,000 per year is not persuasive for the simple reason that his actual 2012 income had already reached the \$30,000 mark by the end of June. He used his base pay of \$15.96 to calculate his projected annual income, but his paychecks show he mostly works on the night shift, which pays \$19.47 per hour, and on weekends, 21.47 per hour.²⁷ To use the income figure he suggests would leave the rest of his income from July through December essentially "uncaptured" for child support purposes and the resulting child support calculation would be significantly lower than it should be.

Mr. C's child support should be calculated from the best estimate of his actual 2012 income. Using his wages from No Name Hospital and the income he received from No Name, Mr. C's total 2012 earnings are estimated at \$52,667.80. When this figure is inserted into CSSD's online child support calculator, it results in a child support amount of \$972 per month for two children (\$720 for one child).²⁸

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.²⁹ An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments.³⁰

²⁶ Obligor's Exh. 8.

²⁷ Obligor's Exh. 6 at pg. 1.

²⁸ Attachment A.

²⁹ AS 25.27.020(b).

³⁰ *Id.*

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 Alaska Supreme Court has stated that it is the custodial parent's prerogative "to decide how to spend the support money on the children."³¹ 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 adjusted to reflect his actual estimated income and as a result, the 2012 and ongoing child support amount has been correctly calculated at \$972 per month for two children (\$720 for one child). This figure should be adopted effective January 2012 and ongoing.

³¹ *CSSD v. Campbell*, 931 P.2d 416, 420 (Alaska 1997).

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; and \$972 per month for two children (\$720 for one child), effective January 2012, and ongoing;
2. 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 3rd day of December, 2012.

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 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.]