

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

| | | |
|-------------------|---|---------------------|
| IN THE MATTER OF: |) | |
| |) | OAH No. 12-0466-CSS |
| W P. X |) | CSSD No. 001180774 |
| _____ |) | |

DECISION AND ORDER

I. Introduction

This case involves the obligor W P. X's appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on August 9, 2012. The child in this case is B, 5. The other party is E J. X.

The formal hearing was held on October 17, 2012. Mr. X did not participate.¹ Ms. X appeared personally to participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child Support and Medical Support Order dated August 9, 2012, is affirmed.

II. Facts

A. Procedural History

Ms. X applied for Medicaid benefits on B's behalf in December 2011.² CSSD initiated the process of establishing Mr. X's child support obligation by requesting financial information from him and issuing an administrative child support order on March 19, 2012.³ Mr. X requested an administrative review and provided financial information and notarized letters regarding shared custody of the child.⁴ On August 9, 2012, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. X's child support at \$187 per month from December 2011 through August 2012, and \$131 per month from September 2012 forward, with support for all the time at issue based on shared custody.⁵ Mr. X appealed on

¹ Telephone calls were made to Mr. X's two contact numbers prior to the hearing, but they both went unanswered. Messages were left at each number for Mr. X to call the Office of Administrative Hearings (OAH), but as of the date of this decision, he has not returned the calls.

² Pre-Hearing Brief at pg. 1.

³ Exhs. 1-2.

⁴ Exhs. 3-4.

⁵ Exh. 5.

September 13, 2012, asserting primarily that CSSD used incorrect income figures in the calculations and that he has been receiving unemployment benefits for all of 2012.⁶

B. Material Facts

Mr. X and Ms. X are the parents of B, 5. The parties share custody of B on a 50/50 basis. Mr. X lives with his parents; Ms. X has two children older than B in her home.⁷

1. Mr. X

Mr. X used to work for No Name, where he earned about \$30,000 per year.⁸ He earned \$3,659.19 during the first quarter of 2011, when his job ended.⁹ Since then, he has been receiving unemployment benefits (UIB). Starting in February 2011, he received \$14,432 for the rest of that year.¹⁰ He also collected unemployment in 2012, and had received \$11,152 up through September 2012. It is not known whether he is still receiving UIB. Ms. X testified that Mr. X told her the day before the hearing that he was working, but she did not know where or what his position entailed.

Mr. X's actual income from all sources in 2011 consisted of \$3,659.19 in wages from No Name; UIB of \$14,432; and the PFD of \$1,174; for total income from all sources in the amount of \$19,265.19.¹¹ A primary custody child support amount calculated from that gross income figure is \$300 per month for one child.¹²

For 2012, CSSD estimated Mr. X's total income at \$24,478.00, which includes wages of \$13,136 imputed to him for the period from September 2012 through December 2012; UIB of \$10,168; and the PFD of \$1,174.¹³ A primary custody child support amount calculated from that gross income figure is \$364 per month for one child.¹⁴

2. Ms. X

Ms. X is currently unemployed. She has three children in the home, including B. The oldest is in junior high school, and B is the youngest. Ms. X testified she is considering going back to work after B starts preschool, but she was not sure if she could do it because she hadn't

⁶ Exh. 6.

⁷ Ms. X's hearing testimony.

⁸ Exh. 7 at pg. 1. Little is known of Mr. X's circumstances, so the factual findings referring to him are taken primarily from the documentary record, with a small amount from Ms. X's testimony.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See* Exh. 5 at pg. 9.

¹² Exh. 5 at pg. 9.

¹³ Exh. 5 at pg. 12.

¹⁴ *Id.*

worked out the logistics for transportation and other issues yet. Ms. X's last job was at No Name, where she worked for 6-8 months, earning \$12-\$13 per hour. She left her job there when she got pregnant with B and, according to the information provided by the Alaska Department of Labor and Workforce Development, she has not had reportable wages since 2007.¹⁵ Ms. X's boyfriend provides the bulk of the support for her household.

Ms. X's total income from all sources in 2011 consisted of the PFD of \$1,174. A primary custody child support amount calculated from that gross income figure is \$50 per month for one child.¹⁶

For 2012, CSSD estimated Ms. X's total income at \$17,294, which includes wages in the amount of \$16,120 imputed to her for the year, based on full-time earnings paid at the minimum wage of \$7.75 per hour; and the PFD of \$1,174.¹⁷ A primary custody child support amount calculated from that gross income figure is \$188 per month for one child.¹⁸

III. Discussion

Mr. X filed an appeal and requested a formal hearing, but he did not participate in the hearing. Otherwise, in addition to his appeal statement, he provided limited evidence regarding his unemployment benefits, and statements from relatives designed to prove that the parties exercise shared custody of B.¹⁹ Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear. The person who filed the appeal, in this case, Mr. X, has the burden of proving by a preponderance of the evidence that CSSD's support order is incorrect.²⁰

A parent is obligated both by statute and at common law to support his or her children.²¹ In cases established by CSSD, the agency collects support from the date one of the parents requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.²² Ms. X applied for Medicaid in December 2011, so that is the month Mr. X's obligation to support B through CSSD should begin.

¹⁵ Exh. 7 at pg. 3.

¹⁶ Exh. 5 at pg. 10.

¹⁷ Exh. 5 at pg. 13. This calculation includes a deduction from income for Ms. X supporting two older children in the home. *See* Civil Rule 90.3(a)(1)(D).

¹⁸ *Id.*

¹⁹ *See* Exh. 4.

²⁰ 15 AAC 05.030(h).

²¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²² 15 AAC 125.105(a)(1)-(2).

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." CSSD used actual income figures for both Mr. X and Ms. X for 2011, but the agency did not have all of the income information for either party for 2012, so the agency made its best estimate of their income earning abilities.

There is no dispute that Mr. X and Ms. X share custody of B on a 50/50 basis. Thus, Mr. X met his burden on the shared custody issue. Where parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than where one parent has primary custody.²³ Each parent's primary custody support obligation to the other is determined based on the income figures for that parent for the year in question. The resulting figure is then put into the shared custody formula.²⁴

Inserting the parties' respective 2011 primary custody child support obligations into a shared custody calculation yields a child support amount for Mr. X to pay in the amount of \$187.19 per month for one child for December 2011 through August 2012.²⁵

Beginning as of September 2012, inserting the parties' respective 2012 primary custody child support amounts into a shared custody calculation yields a child support amount for Mr. X to pay in the amount of \$131.35 per month for one child.²⁶ Rather than applying that figure to all of the months of 2012, CSSD charged Mr. X that amount as an ongoing support amount from September 2012 forward, the first of the month after CSSD issued the amended order.²⁷

Mr. X asserted in his appeal that CSSD used incorrect income figures for both parties, but he did not appear and present evidence on these issues. Thus, in the absence of any additional evidence, Mr. X did not meet his burden of proof in this appeal.

IV. Conclusion

Mr. X did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. The parties exercise shared custody of the children and CSSD used the shared custody formula in its decision. Based on the evidence as a whole, CSSD correctly calculated Mr. X's child support obligation for B at \$187 per month from December 2011 through August 2012; and \$131 per

²³ Civil Rule 90.3(b)(1).

²⁴ *Id.*

²⁵ Exh. 5 at pg. 11.

²⁶ Exh. 5 at pg. 14.

²⁷ *See* Exh. 5 at pgs. 3 & 15.

month, effective from September 2012, forward. CSSD's order should be affirmed. There was no request or grant of a variance under Civil Rule 90.3(c) in this appeal.

V. Child Support Order

- The Amended Administrative Child Support and Medical Support Order dated August 9, 2012, is affirmed: Mr. X is liable for child support for B in the amount of \$187 per month from December 2011 through August 2012; and \$131 per month, effective September 2012, and ongoing.

DATED this 16th day of November, 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 3rd 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.]