

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

IN THE MATTER OF)

K M. P)

OAH No. 12-1025-CSS

CSSD No. 001183596

DECISION AND ORDER

I. Introduction

This case is K M. P's appeal of an order issued by the Alaska Child Support Services Division (Division). That order established his child support obligation for his child, N. On January 14, 2013, a formal hearing was held on Mr. P's appeal.¹ W P, the custodial parent, participated in the hearing. Mr. P also participated. Erinn Brian, Child Support Specialist, represented the Division. The hearing was audio-recorded. The record closed on January 14, 2013.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that the Division's Amended Administrative Child and Medical Support Order should be adjusted to reflect the shared custody arrangements that have been in effect since the parents separated.

II. Facts

The Division established a child support order for Mr. P's child, N because Ms. P filed a request for the Division's services on May 8, 2012.² Paternity is not in dispute.³

The Division issued an Administrative Child and Medical Support Order on August 21, 2012.⁴ Mr. P appealed his child support order.⁵

The Division issued an Amended Administrative Child and Medical Support Order on November 28, 2012.⁶ The Division set Mr. P's monthly ongoing child support at \$1,360. The order also established arrears beginning in May of 2012.⁷ Mr. P requested a formal hearing.⁸

¹ The hearing was held under Alaska Statute 25.27.170.

² Exhibit 1.

³ Recording of Hearing.

⁴ Exhibit 6.

⁵ Exhibit 7.

⁶ Exhibit 10.

⁷ Exhibit 10.

⁸ Exhibit 12.

Mr. and Ms. P are married, but have been separated. Mr. P has been providing direct support to Ms. P and his son. The Division has already credited Mr. P with \$4000 in direct payments of child support and is still in the process of reviewing Mr. P's claims for additional credits. Mr. P did not wish to challenge the income or the calculations that the Division had used to calculate his child support for primary custody. Mr. P simply asked that these calculations be used as part of a shared custody calculation that reflects the overnights that N stays with him. Mr. P has a two-weeks-on and then two-weeks-off work schedule. Mr. P earned \$111,641.07 in 2012.⁹

Mr. P had N about 12 nights per month during the months of 2012 that are covered by this order. The parents anticipate that Mr. P will have N an average of 13 nights per month in 2013 and ongoing.¹⁰

Ms. P is not working. N is not in school yet. Ms. P hopes to find work that would pay \$14 per hour. This is the wage that she earned before N was born. Ms. P use to work in a bank. She has arthritis, which may prevent her from working full-time, but she is still in the early stages of diagnosis and treatment and she has not yet been told that she should avoid full-time work. Ms. P has a daughter, D who lives with her. D is older than N.¹¹

After the hearing the Division filed new calculations as requested and discussed at the hearing.¹²

Based on the evidence in the record, it is more likely than not that the Division's latest calculations are correct and that the income amounts used in these calculations are the best estimates of Mr. P's ongoing annual income and Ms. P's annual earning capacity.¹³ These calculations also use the best estimate of the monthly overnights that reflect the shared custody situation in 2012 and 2013, that is, 12 nights in 2012, and 13 nights in 2013 that N will spend with Mr. P. This means that the shared custody calculation for 2012 is based on Mr. P having 39% custody in 2012 and 43% custody in 2013. These calculations use \$32,000 in imputed and estimated annual earnings for Ms. P. These calculations give Ms. P a deduction for supporting her older child D in her home.¹⁴ These calculations result in a monthly support obligation of

⁹ Recording of Hearing – Testimony of Mr. P & Exhibit 6.

¹⁰ Recording of Hearing – Testimony of Mr. and Ms. P & Exhibit 9.

¹¹ Recording of Hearing – Testimony of Ms. P.

¹² Exhibit 11-13.

¹³ Recording of Hearing & Exhibit 11-13.

¹⁴ Recording of Hearing & Exhibits 11,12, 13 & 14.

\$1,059 for the months of May through December of 2012 and \$954 per month beginning in January of 2013.¹⁵

III. Discussion

Mr. P argued that his child support order should be lower than the amount set by the Division. In a child support hearing, the person who filed the appeal, in this case, Mr. P, had the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁶ Mr. P did meet his burden of showing that his child support order should be adjusted because the parents have been sharing custody and plan to continue to share custody of N.

When calculating child support a parent may be entitled to a reduction the monthly obligation if the parent is exercising shared custody. Shared custody exists when a child resides with a parent at least 30, but no more than 70, percent of the overnights.¹⁷ Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the child. The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.¹⁸

The support calculations provided by the Division assume that Ms. P can work. These calculations use an annual income of \$32,878 for her and give her the appropriate deduction for supporting her older child in her home.¹⁹ If Ms. P discovers that she is unable to work, she may wish to request a modification.

As discussed at the hearing, this order grants only the credits for the direct payments that the Division has already granted for direct payments of child support, and does not address any credits for claimed payments that are under review or are in dispute. Alaska Regulation 15 AAC 125.470 provides a procedure to claim credit for direct payments of child support that is outside the jurisdiction of the formal hearing process.²⁰ The parties should continue to work through this process to ensure the Mr. P receives any additional credits that he is entitled to.

¹⁵ Exhibits 12, 13 & 14.

¹⁶ Alaska Regulation 15 AAC 05.030(h).

¹⁷ Alaska Civil Rule 90.3(f).

¹⁸ Alaska Civil Rule 90.3(f).

¹⁹ Alaska Civil Rule 90.3(a)(1)(C) provides the deduction for supporting an older child in the home.

²⁰ 15 AAC 125.470(e).

IV. Conclusion

I conclude that the Division's order should be adjusted. Mr. P did not dispute that the income used in that order was calculated correctly. Mr. P did show that child support for N should be set using shared custody calculations. The child support amount in this order was calculated using the shared custody formula in Alaska Civil Rule 90.3(b).

V. Child Support Order

1. Mr. P's ongoing child support for N is at \$954 per month effective February 1, 2013.
2. Mr. P is liable for child support arrears for N in the monthly amounts of \$1,059 for the months of May 2012 through December of 2012; and \$954 per month for the month of January 2013.
3. Mr. P is entitled to at least \$4,000 credits for direct or in-kind payments of child support.
4. The Division will award Mr. P with the appropriate credits for any additional direct or in-kind payments of child support that Mr. P shows he is entitled to.
5. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for N.
6. All other provisions of the Administrative Review Decision and the Administrative Child and Medical Support Order on November 28, 2012 remain in effect.

DATED this 31st day of January 2013.

By: Signed
Mark T. Handley
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 19th day of February, 2013.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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