

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

In the Matter of:)
)
 B J. O) OAH No. 13-0068-CSS
) CSSD No. 001174782
_____)

DECISION AND ORDER

I. Introduction

The obligor, B O, appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on December 6, 2012.¹ Mr. O asserts that his monthly child support payment should be reduced because he is only employed part-time.² This decision concludes that Mr. O proved, by a preponderance of the evidence, that he is only working part-time, and that, because of the high unemployment rate where he lives, he is not voluntarily under-employed. This decision further concludes that the revised monthly child support payment (proposed by CSSD on March 2, 2013 and accepted by Mr. O on March 11, 2013) is correct. Therefore, Mr. O's ongoing child support obligation is set at \$151.00 per month beginning January 1, 2013.

II. Facts

A. Relevant Procedural History

On September 29, 2011 CSSD issued an Administrative Child Support and Medical Support Order that set Mr. O's monthly child support obligation at \$50.00 based on B T's primary physical custody of the child.³ On September 21, 2012 Ms. T submitted a child support modification request to CSSD.⁴ On December 6, 2012 CSSD issued a Modified Administrative Child Support and Medical Support Order that increased Mr. O's ongoing child support obligation from \$50.00 per month to \$338.00 per month, effective October 1, 2012.⁵ Mr. O appealed CSSD's decision on January 3, 2013.⁶

The formal hearing was held on February 13, 2013. Mr. O participated in the hearing by telephone, represented himself, and testified on his own behalf. Mr. O's parents also testified. Ms.

¹ Ex. 5, pp. 3 - 7.
² Ex. 6, p. 2; B O hearing testimony.
³ Ex. 1.
⁴ Ex. 2, p. 1.
⁵ Ex. 5, pp. 3 - 9.
⁶ Ex. 6.

T attended the hearing in person and testified. Andrew Rawls, Child Support Specialist, represented CSSD. At the end of the hearing, the record was left open until February 28, 2013 for the submission of post-hearing filings concerning Mr. O's actual income, and for revised calculations. However, no post-hearing filings were received.

By order dated March 1, 2013 the record was reopened and CSSD was ordered to provide updated wage information for Mr. O by March 15, 2013. CSSD provided the needed wage information, and a revised monthly child support figure of \$151.00, on March 4, 2013. On March 11, 2013 Mr. O indicated by letter that he agreed with CSSD's revised figure.⁷ At that point it appeared possible to resolve the case based on the consent of all parties, and so on March 21, 2013 an order was issued directing Ms. T to state her position on CSSD's proposed revised child support figure by April 1, 2013. Ms. T did not do so, and the record closed on April 2, 2013.

B. Material Facts

Mr. O and Ms. T have one child: B T (DOB 00/00/11).⁸ B currently lives full time with his mother. Mr. O does not have any other children.

Mr. O attended high school full time during 2011, so he earned no income that year.⁹ He graduated from high school in 2012. He lives with his parents in Las Vegas, Nevada. Las Vegas currently has one of the highest unemployment rates of all major metropolitan areas in the United States.¹⁰ Mr. O is employed by the Army-Air Force Exchange Service ("AAFES").¹¹ He began working there in August 2012. He is classified as an "intermittent" employee and only works about 16.5 hours in an average week, or about 33 hours every two weeks. He is paid bi-weekly at \$11.19 per hour.¹² During November - December 2012 Mr. O also had another part-time job, but that job was seasonal and it ended.

Mr. O does not currently pay rent. He uses a car belonging to his parents and thus has no car payment. He pays about \$250.00 per month for food and \$70.00 - \$80.00 per month for gas. He has no credit card debt. He does not have to purchase work uniforms or pay union dues. There is no state income tax where he lives. He does not have to pay for medical insurance because he is covered by his father's military health insurance. However, coverage under that insurance does not extend to B.

⁷ Ex. 12.

⁸ Undisputed hearing testimony.

⁹ All facts stated in this paragraph are based on Mr. O's hearing testimony unless otherwise noted.

¹⁰ Ex. 6, p. 2.

¹¹ All facts stated in this paragraph are based on Mr. O's hearing testimony unless otherwise noted.

¹² Ex 7, p. 2; Ex. 13, pp. 1 - 4.

CSSD calculated that, based on a wage rate of \$11.19 per hour, and a work frequency of 16.5 hours per week, Mr. O has annual gross income of \$9,601.02 and adjusted annual income of \$9,033.54.¹³ Based on this estimated income figure, CSSD calculated Mr. O's child support obligation at \$151.00 per month.¹⁴ Mr. O agrees with this amount.

III. Discussion

A. The Burden of Proof is on Mr. O as the Appellant

As the person who filed the appeal in this case, Mr. O has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's Amended Administrative Child Support and Medical Support Order dated December 6, 2012 is incorrect.¹⁵

B. The Legal Basis of Mr. O's Child Support Obligation

A parent is obligated both by statute and at common law to support his or her children.¹⁶ A parent's duty of support begins on the child's date of birth.¹⁷ In those cases in which the child support obligation is determined by CSSD, the agency collects support from the date a parent requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.¹⁸ In this case, Mr. O applied to CSSD for child support services in March 2011, so that is the month his child support obligation to B through CSSD should begin.¹⁹

In Alaska, the rules for calculating child support are contained in Civil Rule 90.3. Under Civil Rule 90.3(a)(1), where the custodial parent has primary physical custody of the child, the first step in calculating child support is to determine the non-custodial parent's total income from all sources. The second step in calculating child support is to multiply the non-custodial parent's income by the specific percentage specified in Civil Rule 90.3. In cases like this one involving payment of support for a single child, and where, as here, the custodial parent has primary custody of that child, Civil Rule 90.3(a)(2)(A) sets the monthly child support payment at 20% of the non-custodial parent's adjusted income.

¹³ Ex. 10, p. 1.

¹⁴ Ex. 10, p. 1.

¹⁵ 15 AAC 05.030(h).

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

¹⁷ *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

¹⁸ 15 AAC 125.105(a)(1)-(2).

¹⁹ Ex. 11, p. 1.

C. CSSD's Revised Child Support Calculations are Correct

When CSSD issued its Modified Administrative Child Support and Medical Support Order of December 6, 2012, CSSD did not have actual income figures for Mr. O. Accordingly, CSSD made its best estimate of Mr. O's income earning ability based on the information it did have. However, during the course of this appeal, Mr. O produced his actual wage records for 2012, and CSSD was then able to re-determine his child support obligation based on his actual income. Based on Mr. O's actual / corrected earnings information, CSSD estimated Mr. O's adjusted annual income at \$9,033.54.²⁰ Based on this adjusted income, and given Ms. T's primary custody of the child, CSSD calculated Mr. O's child support obligation at \$151.00 per month beginning October 1, 2012.²¹ Mr. O agrees that CSSD's figure is appropriate. Ms. T has not stated a position as to CSSD's revised support figure.

IV. Conclusion

Mr. O met his burden and proved, by a preponderance of the evidence, that CSSD's Modified Administrative Child Support and Medical Support Order of December 6, 2012 was incorrect. Based on the new evidence obtained through the hearing process, CSSD correctly revised Mr. O's child support to \$151.00 per month, effective October 1, 2012. This figure was calculated pursuant to Civil Rule 90.3 and should be adopted. No variance under Civil Rule 90.3(c) was requested or granted.

V. Child Support Order

- Mr. O's child support obligation for B is set at \$151.00 per month effective October 1, 2012 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated December 6, 2012 remain in full force and effect.

DATED this 22nd day of April, 2013.

Signed _____
Jay Durych
Administrative Law Judge

²⁰ Ex. 10, p. 1.

²¹ See CSSD filing dated March 2, 2013.

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 10th day of May, 2013.

By: Signed
Signature
Jay D. Durych
Name
Administrative Law Judge
Title

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