

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

In The Matter of:)
)
 F R. M) OAH No. 13-0195-CSS
) CSSD No. 001183822
_____)

DECISION AND ORDER

I. Introduction

This case involves obligor F R. M's appeal of an Administrative Review Decision and Amended Administrative Child and Medical Support Order issued by the Child Support Services Division (CSSD) on December 31, 2012. The child in this case is L, age 15 months. The custodian of record is B L. D.

The formal hearing was held on March 11, 2013. Neither Mr. M nor Ms. D participated.¹ Erinn Brian, Child Support Specialist, represented CSSD. On March 12, 2013 CSSD filed a revised set of child support calculations which corrected a prior error and implemented the shared custody arrangement to which the parties had agreed during CSSD's administrative review process. Based on the record, and after careful consideration, CSSD's revised calculations dated March 12, 2013 are adopted.

II. Facts

A. Material Facts

Mr. M and Ms. D are the parents of L, 15 months. Prior to September 2012 Ms. D had primary custody of L.² However, beginning in September 2012, the parties began sharing custody of L on a 50/50 basis.³

Mr. M lives with his parents.⁴ He is currently employed by No Name Support Services.⁵ Mr. M earned \$6,108 in 2009, \$10,728.09 in 2010, \$24,970.89 in 2011, and \$9,315.06 in 2012.⁶ A primary custody child support amount calculated from his 2012 gross income figure is \$159.00

¹ A telephone call was made to Mr. M's contact number during the hearing, but the call was not answered, and a telephone company message stated that voice mail was not set-up, so no message could be left. Telephone calls were also made to two different phone numbers provided by Ms. D, and messages were left at each number to call the Office of Administrative Hearings (OAH), but Ms. D did not return the calls.

² Ex. 3, pp. 4 - 7; Ex. 11 p. 1.

³ Ex. 3, pp. 4 - 7; Ex. 11 p. 1.

⁴ Ex. 3, pp. 4 - 8.

⁵ Ex. 3, pp. 9 - 11.

⁶ Ex. 7, p. 3.

per month for one child.⁷ This figure is effective for the months of May 2012 through August 2012, during which time Ms. D exercised primary custody. A shared custody child support amount calculated from Mr. M's 2012 gross income figure is \$4.58 per month for one child.⁸ This amount is effective for the months of September 2012 through December 2012, when the parties exercised shared custody.

For 2013, CSSD estimated Mr. M's taxable gross income at \$21,678.00, which includes wages of \$20,800.00 imputed to him for the period January 2013 through December 2013, and an Alaska Permanent Fund Dividend (PFD) of \$878.00.⁹ A shared custody child support amount calculated from that gross income figure is \$138.95 per month for one child.¹⁰

Ms. D has one other child in her household in addition to L.¹¹ She earned \$5,759.23 in 2009, \$967.73 in 2010, \$11,044.44 in 2011, and \$16,857.48 in 2012.¹² A shared custody child support amount calculated from the 2012 gross income figure, for the months of September 2012 through December 2012 (during which shared custody was exercised), is \$0.00 per month for one child.¹³ For 2013, CSSD estimated Ms. D's adjusted annual income at \$12,204.46.¹⁴ A shared custody child support amount calculated from that income figure is \$0.00 per month for one child.¹⁵

B. Procedural History

Ms. D applied for public assistance on L's behalf in May 2012.¹⁶ CSSD initiated the process of establishing Mr. M's child support obligation by requesting financial information from both parents on June 12, 2012.¹⁷ On August 31, 2012 CSSD issued an Administrative Child Support and Medical Support Order which required that Mr. M pay child support in the amount of \$429.00 per month.¹⁸ On November 15, 2012 Mr. M requested an administrative review of CSSD's initial determination and provided financial information and notarized letters regarding

⁷ Ex. 11, p. 1.

⁸ Ex. 10, p. 1.

⁹ Ex. 9, p. 2.

¹⁰ Ex. 10, p. 2; Ex. 11, p. 1.

¹¹ Ex. 6, p. 2.

¹² Ex. 7, p. 3.

¹³ Ex. 10, p. 1.

¹⁴ Ex. 10, p. 2.

¹⁵ *Id.*

¹⁶ CSSD Pre-Hearing Brief at pg. 1.

¹⁷ Ex. 1.

¹⁸ Ex. 2.

shared custody of the child.¹⁹ On December 31, 2012 CSSD issued an Administrative Review Decision.²⁰ That decision set Mr. M's child support at \$355.00 per month for the period May 2012 through August 2012, based on Ms. D having primary custody, and \$171.91 per month from September 2012 forward, based on shared custody, and established child support arrears at \$2,107.64 through December 31, 2012.²¹

On January 31, 2013 Mr. M appealed the Administrative Review Decision.²² In his appeal, he requested that his child support obligation for the months of May 2012 through August 2012 be reconsidered based on his assertion that he was unemployed during those months and had no income.²³ Mr. M did not contest CSSD's determination of his support obligation from September 2012 forward.²⁴

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.²⁵ A biological parent's duty of support begins on the child's date of birth.²⁶ In those cases in which the child support obligation is determined 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.²⁷ Ms. D applied for public assistance in May 2012, so that is the month Mr. M's child support obligation to L through CSSD should begin.

Civil Rule 90.3(a)(1) requires that an obligor's child support amount be calculated based on his or her "total income from all sources." CSSD used actual income figures for both Mr. M and Ms. D for 2012, but the agency did not have all of the income information for either party for 2013. Accordingly, for 2013, CSSD made its best estimate of the parties' income earning abilities.

Mr. M filed the appeal and requested the formal hearing in this case. In addition to his appeal statement, he provided limited evidence regarding his employment and income, and

¹⁹ Ex. 3.

²⁰ Ex. 6.

²¹ Ex. 6.

²² Ex. 7, p. 1.

²³ Ex. 7, p. 1.

²⁴ Ex. 7, p. 1.

²⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

²⁶ *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

²⁷ 15 AAC 125.105(a)(1)-(2).

statements from relatives designed to prove that the parties exercise shared custody of L.²⁸ However, Mr. M did not participate in the hearing. Accordingly, 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 appeals a CSSD child support determination (in this case, Mr. M), has the burden of proving, by a preponderance of the evidence, that CSSD's support order is incorrect.²⁹ Mr. M did not provide evidence to prove that CSSD's decision setting Mr. M's child support at \$355.00 per month for the period May 2012 through August 2012 was incorrect. However, CSSD itself obtained corrected earnings information for the parties during the pendency of this appeal.³⁰ CSSD mailed copies of this information and CSSD's revised support figures to both Mr. M and Ms. D and neither objected.

Based on the corrected earnings information, CSSD determined its prior 2012 support calculations were incorrect, and recalculated Mr. M's 2012 child support obligation.³¹ Using his *actual* 2012 income, CSSD correctly determined Mr. M's child support obligation for the period May 2012 through August 2012 at \$159.00 per month.³²

The next issue concerns the portion of CSSD's Administrative Review Decision that determined Mr. M has custody of L 43% of the time, and Ms. D has custody of L 57% of the time, beginning in September 2012. Mr. M advocated for a finding of shared custody and did not dispute CSSD's determination of a 43/57 "split." Ms. D opposed Mr. M's request for redetermination of his support obligation on very general terms. However, she did not specifically dispute either the shared custody finding as of September 2012, or CSSD's determination of the specific ratio / percentage of the shared custody "split."³³ Because these shared custody issues were not contested on appeal, and furthermore, because CSSD's findings as to these issues is supported by credible evidence in the record,³⁴ CSSD's determination as to shared custody is correct.

²⁸ Ex. 3.

²⁹ 15 AAC 05.030(h).

³⁰ Ex. 7.

³¹ See CSSD filing dated March 12, 2013.

³² Again, CSSD notified both Mr. M and Ms. D of its new earnings information, calculation, and resulting child support figure, and neither objected.

³³ Ex. 4, p. 1.

³⁴ See Ex. 3, pp. 3 - 8; Ex. 5, pp. 1- 11.

Where parents exercise shared custody of their children, Civil Rule 90.3 requires that child support be calculated differently than where one parent has primary custody.³⁵ When calculating support in a shared custody situation, 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 figures for each parent are then entered into the shared custody formula.³⁶

For the period September 2012 through December 2012, CSSD originally determined Mr. M's shared custody child support obligation based on his estimated income.³⁷ However, during the pendency of this appeal CSSD recalculated Mr. M's child support obligation for September 2012 through December 2012 using the actual income figures which had become available.³⁸ Inserting the parties' respective 2012 primary custody child support obligations into a shared custody calculation yields a child support payment in the amount of \$4.58 per month for one child; this is the amount for Mr. M to pay for September 2012 through December 2012.³⁹

Beginning as of January 2013, inserting the parties' respective 2012 primary custody child support amounts into a shared custody calculation yields a child support payment in the amount of \$138.95 per month for one child; this is the amount for Mr. M to pay from January 2013 forward.⁴⁰

IV. Conclusion

The evidence presented in this appeal proves by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. It was not disputed that a 43/57 shared custody arrangement between the parties began in September 2012. Mr. M's child support obligation for L is now correctly calculated at \$159.00 per month from May 2012 through August 2012; \$4.58 per month from September 2012 through December 2012; and \$138.95 per month from January 1, 2013 forward. There was no request or grant of a variance under Civil Rule 90.3(c) in this appeal.

V. Child Support Order

Mr. M is liable for child support for L in the amount of \$159.00 per month from May 2012

³⁵ Civil Rule 90.3(b)(1).

³⁶ *Id.*

³⁷ See Ex. 6.

³⁸ See CSSD filing dated March 12, 2013.

³⁹ See CSSD filing dated March 12, 2013 and Exs. 9 - 11. Also, CSSD notified both Mr. M and Ms. D of its new calculation and resulting child support figure for these months, and neither party objected.

⁴⁰ See CSSD filing dated March 12, 2013 and Exs. 9 - 11. Again, CSSD notified both Mr. M and Ms. D of its new calculation and resulting child support figure for these months, and neither party objected.

through August 2012; \$4.58 per month from September 2012 through December 2012, and \$138.95 per month from January 1, 2013 forward.

All other provisions of the Amended Administrative Child Support and Medical Support Order dated December 31, 2012 remain in full force and effect.

DATED this 1st day of April, 2013.

By: Signed
Jay D. Durych
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 April, 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.]