

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

In the Matter of: )

D L. K )

OAH No. 13-0239-CSS

CSSD No. 001179582

**DECISION AND ORDER**

**I. Introduction**

D L. K appealed an Administrative Review Decision that CSSD issued in his case on November 29, 2012. The obligee child is D, 1½ years of age.

The hearing was held on March 14, April 9 and April 30, 2013. Mr. K appeared in person for the first two hearings; the custodian, T E. F, did not participate.<sup>1</sup> Erinn Brian, Child Support Specialist, represented CSSD.

Based on all the evidence, Mr. K's child support is set at \$360 per month for September 2011 through December 2011; and \$324 per month for January 2012 through June 2013, and ongoing. These amounts were calculated pursuant to Civil Rule 90.3, without variation under Civil Rule 90.3(c).

**II. Facts**

*A. Procedural History*

Ms. F began receiving public assistance in September 2011.<sup>2</sup> CSSD initiated a child support action against Mr. K and issued an Administrative Child Support and Medical Support Order that set his child support at \$820 per month.<sup>3</sup> After Mr. K requested an administrative review, CSSD issued an Administrative Review Decision on November 29, 2012 that affirmed the earlier order.<sup>4</sup> Mr. K requested a Default Review of his child support order, which CSSD denied. He filed an appeal on February 13, 2013.<sup>5</sup> At the hearing, CSSD agreed that Mr. K's request for a Default Review and his appeal of CSSD's denial were intended to appeal the initial Administrative Child Support and Medical Support Order. The Default Review is now moot.

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<sup>1</sup> Prior to each hearing, Ms. F was called to participate, but she did not answer the calls, nor did she return the voicemail messages left for her to contact the Office of Administrative Hearings (OAH).

<sup>2</sup> Exh. 2 at pg. 8.

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 6.

<sup>5</sup> Exh. 7.

*B. Material Facts*

Mr. K and Ms. F are the parents of D, who currently is just 1½ years of age. She lives full-time with Ms. F.

Mr. K joined the Army National Guard in 2011. After basic training, he spent two months in specialty training, then was transferred to the part-time National Guard. He attends a yearly two-week training camp and works one weekend per month. He is not full-time military and does not receive non-pay benefits such as a housing or food allowance.

In addition to his Guard duties, Mr. K began a part-time job at the end of March 2013 in which he works about 32 hours per week at \$9.50 per hour. He had another part-time job earlier in the year, but was terminated as the result of a staff reduction.

Mr. K submitted all of his Leave and Earning Statements (LES's) from 2011 forward. CSSD used the documents to determine his National Guard income was \$21,870.97 in 2011 and \$18,847.62 in 2012.<sup>6</sup> From these figures, to which the agency added the PFD of \$1,174 for 2011 and \$878 for 2012, CSSD calculated his child support at \$360 per month for 2011 and \$324 per month for 2012.<sup>7</sup>

**III. Discussion**

The person who files the administrative appeal has the burden of proving that the order CSSD issued is incorrect.<sup>8</sup> On November 29, 2012, CSSD issued an Administrative Review Decision affirming its earlier Administrative Child Support and Medical Support Order that set his child support amount at \$820 per month.

*A. Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.<sup>9</sup> In general, this obligation begins when the child is born.<sup>10</sup> In administrative child support cases, CSSD's regulations require the agency to collect support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on

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<sup>6</sup> Exh. 9.

<sup>7</sup> Exhs. 10-11.

<sup>8</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

<sup>9</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>10</sup> *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

behalf of the child.<sup>11</sup> Ms. F began receiving public assistance for D in September 2011, so that is the first month for which Mr. K is obligated to support D through CSSD.<sup>12</sup>

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's Administrative Child Support and Medical Support Order set Mr. K's child support at \$820 per month, but that calculation used income derived from the usual military base pay and benefits that full-time soldiers receive. Mr. K is not full-time military and he does not receive a regular base pay or non-pay benefits.

After the hearing, CSSD calculated child support amounts for 2011 and 2012 based on Mr. K's actual income figures.<sup>13</sup> The results are \$360 per month for 2011 and \$324 per month for 2012. CSSD did not calculate a support amount for 2013 because Mr. K's income from his part-time jobs has been erratic and cannot be reliably estimated for the full year. As a result, CSSD requested that Mr. K's 2012 child support amount be applied to 2013. Given the difficulty in estimating his 2013 income, CSSD's request is reasonable and should be adopted.

#### **IV. Conclusion**

Mr. K met his burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision was incorrect. Mr. K is in the part-time National Guard, not the full-time military, and he does not receive a regular base pay or non-pay benefits. Based on his actual income for each year, his child support is now correctly calculated pursuant to Civil Rule 90.3 at \$360 per month for 2011 and \$324 per month for 2012 and ongoing. No variance under Civil Rule 90.3(c) was requested or granted.

#### **V. Child Support Order**

- Mr. K is liable for child support for D in the amount of \$360 per month for September 2011 through December 2011; and \$324 per month from January 2012 through June 2013, and ongoing;

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<sup>11</sup> 15 AAC 125.105(a)(1)-(2).

<sup>12</sup> Exh. 2 at pg. 8.

<sup>13</sup> Exhs. 10-11.

- All other provisions of the Administrative Review Decision dated November 29, 2012, remain in full force and effect.

DATED this 30<sup>th</sup> day of May, 2013.

Signed  
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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 17<sup>th</sup> day of June, 2013.

By: Signed  
\_\_\_\_\_  
Signature  
Jeffrey A. Friedman  
\_\_\_\_\_  
Name  
Administrative Law Judge  
\_\_\_\_\_  
Title

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