

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

IN THE MATTER OF:)	
)	OAH No. 13-0276-CSS
D L. C)	CSSD No. 001186988
_____)	

DECISION AND ORDER

I. Introduction

The obligor, D L. C, appealed an Amended Administrative Child and Medical Support Order that CSSD issued in her case on February 8, 2013. The child is D, 7. The custodian of record is X C. W, Jr.

The formal hearing was held on March 26, 2013. Both Ms. C and Mr. W participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. C's child support is set at \$253 per month from September 2012 forward, based on her actual income for that year. The request to impute income to her for 2013 and ongoing is denied.

II. Facts

A. Procedural History

Mr. W's state of residence submitted an application for child support services on D's behalf in September 2012.¹ CSSD initiated the process of establishing Ms. C's child support obligation and issued an administrative child support order on December 5, 2012.² Ms. C requested an administrative review, after which CSSD issued an Amended Administrative Child Support and Medical Support Order on February 8, 2013. It set Ms. C's ongoing child support at \$358 per month, with arrears of \$1,728 through February 2013.³ Ms. C appealed on February 25, 2013, arguing essentially that she is currently looking for full-time work.⁴

¹ Exh. 1.
² Exh. 2.
³ Exh. 6.
⁴ Exh. 7.

B. Material Facts

Based on the record as a whole, the following facts are established by a preponderance of the evidence based on the testimony of Ms. C, Mr. W, and the documents submitted into evidence, as cited below.

Ms. C and Mr. W are the parents of D, 7, who lives with Mr. W in Pennsylvania.

Ms. C has recently moved to No Name, Alaska. She is not employed full-time, but instead has had a series of part-time jobs that she has supplemented with unemployment benefits (UIB). She earned less than \$10,000 in both 2009 and 2010, and received UIB both years.⁵ In 2011, her only income was \$9,177 in unemployment benefits.⁶ Ms. C's employment picture improved in 2012, when she earned \$16,451.51 from wages and received \$534 in unemployment benefits.⁷ Ms. C is currently looking for full-time work paying up to \$15 per hour and has interviewed for at least two positions recently.

Ms. C is dealing with several medical issues – she testified she has ADHD and is bipolar, and that she is attending an outpatient alcohol treatment program. Ms. C did not submit any evidence from a medical professional as to her diagnoses, but she did file a list of the medical appointments she has had recently; the list indicates she attended multiple appointments in 2012, and at least twenty appointments from January 2013 through mid-March 2013.⁸

A child support calculation taken from Ms. C's actual 2012 income figures yields a monthly support amount of \$253.⁹ CSSD imputed full-time income of \$24,960 to Ms. C based on an hourly wage of \$12. That annual income figure resulted in an ongoing support amount of \$358 per month.¹⁰

III. Discussion

Ms. C requested the formal hearing in this matter. Her primary challenge is to the income figure CSSD used to calculate the ongoing support obligation of \$358 per month. She does not contest the 2012 calculation. As the appealing party, Ms. C has the burden of proving by a preponderance of the evidence that CSSD's amended child support order is incorrect.¹¹

⁵ Exh. 8.

⁶ *Id.*

⁷ *Id.*

⁸ Obligor's documents received on March 27, 2013, at pg. 1.

⁹ Exh. 6 at pg. 7.

¹⁰ Exh. 6 at pg. 8.

¹¹ 15 AAC 05.030(h).

Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. CSSD correctly calculated Ms. C's child support for 2012 at \$253 per month, based on her actual income for the year. CSSD also initially calculated Ms. C's 2013 and ongoing child support at \$358 per month, based on full-time income of \$12 per hour imputed to her.

CSSD's 2013 calculation is not an accurate reflection of Ms. C's ability to pay support. The income she received in 2012 is the highest amount reported for her since 2009. Ms. C is currently working part-time, applying for available positions in her community and attending multiple medical appointments in Anchorage.

Mr. W insists that the 2013 calculation should be adopted because Ms. C is healthy, she doesn't have any children in the home to take care of, and she routinely takes part-time jobs working for cash that supplement her reported income. For purposes of this appeal, Mr. W's assertions were considered, but they have been given less weight than Ms. C's evidence. Her testimony was supported by documentary evidence, whereas his was not.

IV. Conclusion

Ms. C met her burden of proving that CSSD's Amended Administrative Child and Medical Support Order was incorrect. The 2012 child support amount was correctly calculated at \$253 per month and it should be adopted for 2013 and ongoing, as well. This figure was calculated pursuant to Civil Rule 90.3, without variation under the manifest injustice provisions of the Rule.

V. Child Support Order

- Ms. C is liable for child support for D in the amount of \$253 per month from September 2012, forward;
- All other provisions of the Amended Administrative Child and Medical Support Order dated February 8, 2013 remain in full force and effect.

DATED this 24th day of April, 2013.

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 13th day of April, 2013.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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