

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

In The Matter of:)
)
 P B. J) OAH No. 13-0392-CSS
) CSSD No. 001184812
_____)

DECISION AND ORDER

I. Introduction

This case involves obligor P B. J's appeal of an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 27, 2012. The child in this case is C, age 11 months. The custodian of record is B R. N.

The formal hearing was held on April 17, 2013. Mr. J and Ms. N participated by telephone, represented themselves, and testified. Russell L. Crisp, Child Support Specialist, participated by telephone and represented CSSD. The record was left open until April 26, 2013 for post-hearing filings. Based on the record, and after careful consideration, CSSD's revised calculation of April 19, 2013, which uses an income averaging approach, is adopted. Using this approach, Mr. J's child support obligation is set at \$437.00 per month, effective December 1, 2012.

II. Facts

A. Relevant Procedural History

Ms. N applied for CSSD's services on June 27, 2012.¹ On September 7, 2012, CSSD issued an Administrative Child Support and Medical Support Order that required Mr. J to pay child support in the amount of \$376 per month.² On October 1, 2012, Mr. J requested an administrative review of CSSD's initial determination and provided financial information.³ On November 27, 2012, CSSD issued an Administrative Review Decision and an Amended Administrative Child and Medical Support Order.⁴ That decision set Mr. J's child support at \$589 per month beginning December 1, 2012, and established child support arrears of \$1,164.00 through November 30, 2012.⁵ CSSD's support order was based on a wage rate of \$19.59 per hour with full time employment of 40

¹ Ex. 1 p. 9.
² Ex. 1 p. 1.
³ Ex. 2 pp. 2 - 5.
⁴ Ex. 4.
⁵ Ex. 4 pp. 1, 3, 4.

hours per week for 52 weeks per year.⁶ CSSD's income estimate also included the Alaska Permanent Fund Dividend and certain dividends Mr. J received from No Name, Inc.⁷ On March 14, 2013, Mr. J appealed CSSD's Administrative Review Decision.⁸

*B. Material Facts*⁹

Mr. J and Ms. N are the parents of C, currently 11 months old.¹⁰ Ms. N has primary custody of C, but C stays with Mr. J two days per week. Mr. J was incarcerated for much of 2009 and part of 2010, so he had little income during those years. Late in 2010, Mr. J got a job working on Alaska's North Slope. He worked on the North Slope as a laborer and a no name operator for about one year. During this period he was earning \$19.50 per hour and occasionally worked up to 85 hours per week. While Mr. J worked on the slope, he made some large purchases and incurred significant debts.

During the time Mr. J was working on the North Slope he met Ms. N and she became pregnant. In October 2011, the two decided it would be best if Mr. J was in town for the pregnancy and child birth, so he quit his North Slope job and came back to Anchorage. Soon thereafter, Mr. J broke his leg and his wrist while snow-machining. His injuries are healing, but his leg is still weak, and he needs wrist surgery to regain the full use of his hand.

In December 2011, Mr. J was arrested for driving while intoxicated (DWI) and spent one month in jail. He was subsequently convicted and, as a result of this, he lost his truck and his credit was damaged. He estimates that this has set him back by about \$30,000.

In January 2012, Mr. J got a job doing demolition work for about a month at a wage of \$12 - \$13 per hour. After that, Mr. J obtained work at two different no name shops. He still works at the second of these shops and is paid \$14 per hour. However, the shop is only able to provide him with about 32 hours of work per week.

After C was born, Mr. J wanted to work again on the North Slope. However, he has found that the injuries he sustained in his snowmobile accident have made it difficult for him to get rehired there. Currently he only earns about \$1,400 per month.

⁶ Ex. 4 p. 7.

⁷ Ex. 4 p. 7.

⁸ Ex. 5.

⁹ All information in this section is taken from Mr. J's hearing testimony unless otherwise noted.

¹⁰ Ex. 3 p. 5; undisputed hearing testimony.

Records obtained by CSSD from the Department of Labor and Workforce Development (DOL) indicate that Mr. J received gross wages of \$13,918.23 in 2010; \$54,929.17 in 2011; and \$21,104.37 in 2012.¹¹

Mr. J currently lives with a friend; his share of the rent and utilities usually averages about \$800 per month. He still owes money on the truck that he forfeited due to his DWI; he is currently paying \$160 per month on that debt. He also pays about \$139 per month for car insurance and another \$100 per month for the breathalyzer installed in his vehicle. He spends about \$350 per month for food and \$100 per month for his cell phone. Mr. J pays about \$100 per month for jewelry he purchased for Ms. N. He also pays \$50 - \$100 per month on an old pawnshop loan. Mr. J owes money to the court system but has not been able to make regular payments; his Alaska Permanent Fund dividend checks are garnished each year because of this, and sometimes his bank account is garnished. Altogether Mr. J's monthly expenses total about \$1,800 - \$1,850 per month.

III. Discussion

A. Mr. J has the Burden of Proof

As the person who filed the appeal in this case, Mr. J 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 November 27, 2012 is incorrect.¹²

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

A parent is obligated both by statute and at common law to support his or her children.¹³ A parent's duty of support begins on the child's date of birth.¹⁴ 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.¹⁵

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 is to multiply the non-custodial parent's income by the percentage

¹¹ Ex. 9 p. 1.

¹² 15 AAC 05.030(h).

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

¹⁴ *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

¹⁵ 15 AAC 125.105(a)(1)-(2).

specified in Civil Rule 90.3 applicable to the number of children for whom support must be paid.¹⁶ In order to calculate a child support award for a single child, the non-custodial parent's adjusted income must be multiplied by 20%.¹⁷

C. What is the Appropriate Income Period on which Support Should be Based?

Mr. J's income has fluctuated significantly over the past three years.¹⁸ If a person has erratic income from year to year, Civil Rule 90.3 allows the child support obligation to be based on an average of several years' worth of income.¹⁹ On several occasions, the Alaska Supreme Court has approved support awards that were based on the averaging of the noncustodial parent's income over at least three years.²⁰

The best estimate of Mr. J's annual income is found in his historical earnings. The income information contained in the record covers the three year period from 2010 through 2012. During this three year period Mr. J earned a total of \$89,951.77. This is an average of \$29,983.92 per year and is the best estimate of Mr. J's anticipated income for the current year.²¹ Inserting that figure into the Civil Rule 90.3 calculation yields a child support payment of \$437 per month for one child.²²

IV. Conclusion

Mr. J met his burden and proved, by a preponderance of the evidence, that CSSD's Amended Administrative Child Support and Medical Support Order of November 27, 2012, which set Mr. J's child support obligation at \$589.00 per month beginning December 1, 2012, was incorrect. Based on the additional evidence obtained through the hearing process, and utilizing income averaging, Mr. J's correct child support obligation is \$437 per month, effective December 1, 2012. This figure was calculated pursuant to Civil Rule 90.3 and should be adopted. There was no request or grant of a variance under Civil Rule 90.3(c) in this appeal.

¹⁶ Civil Rule 90.3(a)(2).

¹⁷ Civil Rule 90.3(a)(2)(a).

¹⁸ Ex. 9.

¹⁹ Civil Rule 90.3, Commentary, Section III(e).

²⁰ See, for example, *Pugil v. Cogar*, 811 P.2d 1062 (Alaska 1991); *Zimin v. Zimin*, 837 P.2d 118 (Alaska 1992); *Hill v. Bloom*, 235 P.3d 215 (Alaska 2010).

²¹ Using a three year average of Mr. J's wages is appropriate here for several reasons. First, Mr. J was incarcerated for much of 2010, so his earnings for that single year were abnormally low. Second, Mr. J had a comparatively high paying job on the North Slope during 2011, so his earnings for that single year were unusually high. Third, Mr. J's 2012 earnings were significantly more than his 2010 earnings, but significantly less than his 2011 earnings. Finally, Mr. J's 2012 earnings increased substantially from the first half of that year to the second half of that year. Accordingly, his earnings are erratic and show no clear trend. Under these circumstances, using a three year average is the fairest approach because it balances out Mr. J's high-income year with his low-income years.

²² Ex. 8.

V. Child Support Order

- Mr. J's child support obligation for C is set at \$437 per month effective December 1, 2012 and ongoing;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated November 27, 2012 remain in full force and effect.

DATED this 16th day of May, 2013.

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 3rd day of June, 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.]