

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

In the Matter of:)
)
K M. C) OAH No. 13-0432-CSS
) CSSD No. 001186436
_____)

DECISION AND ORDER

I. Introduction

The custodian, B L. A, appealed an Administrative Review Decision that CSSD issued in Mr. C's case on February 26, 2013. The obligee child is F, 16.

The hearing was convened on April 22, 2013. Ms. A requested a continuance, which was granted. The hearing was rescheduled for and held on May 14, 2013. Both parties appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD.

Based on all the evidence, Mr. C's child support is set at \$352 per month, effective August 2012 and ongoing, based on his estimated annual income. This figure was calculated pursuant to Civil Rule 90.3, without variation under Civil Rule 90.3(c).

II. Facts

A. Procedural History

Ms. A applied for child support services on August 14, 2012.¹ CSSD initiated a child support action against Mr. C and issued an Administrative Child Support and Medical Support Order that set his child support at \$1,056 per month.² After Mr. C requested an administrative review, CSSD issued an Administrative Review Decision on February 26, 2013 that affirmed the earlier order.³ Ms. A filed an appeal on March 27, 2013, asserting that the amount set by CSSD is far more than Mr. C can afford, both currently and in the near future.⁴

B. Material Facts

Mr. C and Ms. A are the parents of F, 16. The parties separated in April 2012. F lives primarily with Ms. A.

Mr. C and Ms. A previously owned a small construction firm. They closed the business because they had a large building project force them into bankruptcy after the buyers reneged on the contract. They are at least three years behind on filing their corporate and personal federal

¹ Exh. 1 at pg. 3.
² Exh. 3.
³ Exh. 5.
⁴ Exh. 6.

income tax returns, but Mr. C and Ms. A were not asked to complete them for this appeal. Ms. A testified they had net losses during their last years of operation, so the returns would not be illustrative of Mr. C's income for child support purposes.

Mr. C was in a motor vehicle accident in June 2012 and sustained injuries to his back. He has had some treatment and also has been referred to an orthopedic surgeon, but Mr. C maxed out the medical coverage on the insurance policy and cannot afford any additional medical treatment at this time. He cannot afford to hire an attorney to help him with the accident litigation.

Mr. C is not currently working for an employer. His back issues have not been resolved and he either would not be able to do the hard physical labor or no one would hire him, given the history of his injuries. Mr. C is able to do some physical labor, however, so he does odd handyman jobs when he is able. He has also been operating an online store since early 2013. He makes about \$2,000 per month from his combined pursuits, but he cannot always pay all of his expenses. Mr. C's monthly expenses are \$850 for rent; \$200 for utilities; \$275 for a truck payment; \$200 for vehicle insurance; \$600 for fuel; \$300 for food and \$45 for a cell phone; all of which total about \$2,470.

III. Discussion

The person who files the administrative appeal has the burden of proving that the order CSSD issued is incorrect.⁵ On February 26, 2013, CSSD issued an Administrative Review Decision affirming its earlier Administrative Child Support and Medical Support Order that set his child support amount at \$1,056 per month.

A parent is obligated both by statute and at common law to support his or her children.⁶ In general, this obligation begins when the child is born.⁷ 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 behalf of the child.⁸ Ms. A applied for CSSD's services in August 2012, so that is the first month for which Mr. C is obligated to support F through CSSD.⁹

⁵ 15 AAC 05.030(h); 2 AAC 64.290(e).

⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁷ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

⁸ 15 AAC 125.105(a)(1)-(2).

⁹ Exh. 1 at pg. 3.

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 could not ascertain Mr. C's actual income when it was establishing his child support obligation, so the agency imputed income to him in the amount of \$39.30 per hour times 2,080 hours, the number of hours a full-time employee typically works in one year.¹⁰ These figures were taken from occupational wage statistics for a supervisor/manager in the construction trades.¹¹ They result in an estimated annual income amount of \$81,744, which yields a child support calculation of \$1,056 per month.¹²

Based on both parties' testimony, CSSD's calculation clearly is too high in Mr. C's case. Since his actual income cannot be documented at this time, CSSD suggested that his child support be based on an income figure that is derived from his monthly expenses. CSSD's proposal is based on the proposition that if Mr. C can generally pay his regular monthly expenses, he is earning at least that amount of income. Because of the lack of evidence in the documentary record and because Mr. C and Ms. A are essentially in agreement that Mr. C cannot afford to pay the agency's amount, CSSD's proposal is reasonable. His current estimated income is \$2,000 per month, which totals \$24,000 annually. Inserting that figure into CSSD's online child support calculator results in a support amount of \$352 per month.¹³

IV. Conclusion

Ms. A met her burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision was incorrect. Based on his typical monthly expenses, Mr. C's annual income is estimated at \$24,000. This annual amount results in a child support figure of \$352 per month. This amount is a reasonable estimate of Mr. C's ability to pay support and should be adopted. No variance under Civil Rule 90.3(c) was requested or granted.

V. Child Support Order

- Mr. C is liable for child support for F in the amount of \$352 per month from August 2012 through June 2013, and ongoing;

¹⁰ Exh. 3 at pg. 4.

¹¹ *Id.*

¹² Exh. 3 at pg. 7.

¹³ Attachment A.

- All other provisions of the Administrative Review Decision dated February 26, 2013 remain in full force and effect.

DATED this 3rd day of June, 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 21st 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.]