

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

IN THE MATTER OF:)

X W. M)

) OAH No. 13-0433-CSS

) CSSD Nos. 001068431

) 001187884

DECISION AND ORDER

I. Introduction

This is a divided custody case involving two minor children. The obligor, X W. M, disputes an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on March 14, 2013. Several hearings were held. At each hearing Child Support Specialist Erinn Brian participated by telephone as did the custodian, D C n/k/a D J. For all hearings Mr. M was called at the telephone numbers he provided, but the calls were either unanswered or a voice mail message was left. The hearing proceeded without participation from Mr. M. When calculated correctly, the record supports a monthly support obligation in the amount of \$171, based on divided custody effective November 1, 2012.

II. Facts

Only the material facts and procedural events are set forth:

- November 2, 2012 CSSD was notified by Mr. M that the parties were exercising divided custody and that he was requesting services.¹
- CSSD opened a case per Mr. M’s request and issued an Administrative Order to provide Financial and Medical Insurance Information to both parties.²
- Both parties agreed to the suspension of support for the child residing with Mr. M. However, Ms. J disputed the date from which support should be suspended.³
- On December 10, 2012 CSSD issued its Notice of Petition for Modification of Administrative Support Order.⁴

¹ Exhibits 2, 3.

² Exhibit 4.

³ Exhibit 5.

⁴ Exhibit 7.

- CSSD issued several decisions that required correction due to clerical errors and factual oversights.⁵
- Mr. M provided income information as requested by CSSD.⁶
- On March 14, 2013 CSSD issued a Modified Administrative Child Support and Medical Support Order. This order established that Mr. M’s monthly child support obligation for one child is \$10 per month, based on divided custody effective January 1, 2013.⁷
- That same day CSSD received a letter from Mr. M stating that he had not worked since July 2012 because he suffered an aggravation of a prior back injury.⁸ He provided medical records up through August 2012.
- Mr. M appealed contending that the March 14, 2013 order incorrectly calculated his support obligation and he was the victim of discrimination.⁹
- A hearing was held May 6, 2013. Mr. M was called at the time noticed for hearing at the phone numbers he provided. The phones went unanswered and a voicemail message was left, informing Mr. M that the record would remain open for ten days to provide him with an opportunity to show cause for his failure to appear and request a supplemental hearing.¹⁰
- At the May 6, 2013 hearing CSSD presented a new calculation using the most current income information.¹¹ CSSD contends this is the correct child support obligation for the parties. CSSD’s new calculation would set Mr. M’s monthly child support obligation for one child at \$171 per month, based on divided custody effective November 1, 2012. This was a material increase based on a position and calculations not previously provided to Mr. M. To provide Mr. M with an opportunity to address CSSD’s new position and calculation, a supplemental hearing was noticed and the new calculations were served

5 Exhibits 8 – 14.
6 Exhibits 13, 14.
7 Exhibit 16.
8 Exhibit 15.
9 Exhibit 17.
10 15 AAC 05.030(j).
11 Exhibit 19.

upon the parties.¹²

- In an earlier appeal, Mr. M claimed he could not work. The supplemental notice informed Mr. M that if he was contending that his child support should be varied because he has a physical condition or ailment that prevented him from working, then he would need to present current evidence from a health care provider supporting his contention. He would also need to provide evidence of the date he stopped working because of his physical condition.
- A supplemental hearing was held May 22, 2013. As with the prior hearings Mr. M was called at the phone numbers contained in the file at the appointed time, and as before, the phone numbers went unanswered.

III. Discussion

Mr. M, as the individual appealing the March 13, 2013 Modified Administrative Child Support and Medical Support Order, has the burden of proving that it is more likely than not that his child support should be set at an amount other than the \$10 ordered.¹³ The crux of Mr. M's current appeal is that he challenged the payment calculated by CSSD.¹⁴ Had he participated in the hearing, Mr. M could have provided the rationale in support of his appeal and how he believed the support amount was an error. He did not. The evidence provided by Mr. M in support of his appeal is contained in the record.

Reviewing the record, Mr. M makes two arguments. The first is that he cannot work so the support amount is incorrect. The second argument is that the calculation is incorrect.

An obligor parent has the burden of proving his or her earning capacity.¹⁵ An Obligor who claims he or she cannot work or pay child support because of a disability or similar impairment, must provide sufficient proof of the medical condition, such as testimony or other evidence from a physician.¹⁶ Mr. M supplied out of date medical records and an unsworn written statement that because of his physical condition he has not worked since July 2011.

¹² "If a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear." 15 AAC 05.030(j).

¹³ "At the hearing, the person requesting the hearing has the burden of proving that the action by the department to which that person objects is incorrect." 15 AAC 05.030(h).

¹⁴ Exhibit 17.

¹⁵ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁶ *Id* at 1371.

Guidance was provided to Mr. M regarding the type of evidence necessary to support a variance, because he physically could not work, and an opportunity to present the evidence. However, Mr. M did not take advantage of this opportunity.

Next, Mr. M challenged CSSD's calculation. He was correct that CSSD had incorrectly calculated his support obligation. At the hearing, CSSD agreed with Mr. M. CSSD explained that its divided custody worksheet contained an error.¹⁷ When it performed its divided custody calculation resulting in a \$10 per month child support payment from Mr. M to Ms. J, CSSD used a monthly income amount and not a yearly income amount.¹⁸ This resulted in a \$10 per month child support using a divided custody calculation. The revised divided custody calculation resulted in Mr. M owing Ms. J \$171 per month for one child.¹⁹

Ms. J and CSSD asked that Mr. M's child support for two children be addressed at this hearing. Ms. J testified that in June 2013 the custody arrangement would change and she would have primary physical custody of both children. Child support for divided custody and primary physical custody are distinct calculations.²⁰ Should the child support arrangement change, then either parent should petition for modification.

Finally, the effective date of the divided custody modification should be November 1, 2012 because Mr. M filed his application for services in November, 2012.²¹

IV. Conclusion

CSSD's calculation was incorrect. Mr. M was correct that his support obligation had been calculated incorrectly. Using the annual income available for child support, Mr. M's divided custody support obligation is \$171 per month effective November 2012.

V. Child Support Order

- X M's monthly support obligation is \$171, based on divided custody (Civil Rule 90.3(b)) effective November 1, 2012.

¹⁷ Exhibit 16 page 7.

¹⁸ Cf: Exhibit 16 page 7, Line 3 with CSSD's May 6, 2013 Notice of filing and exhibits thereto.

¹⁹ Exhibit 19.

²⁰ Cf: Civil Rule 90.3(a) with Civil Rule 90.3(b).

²¹ 15 AAC 125.105(a)(2) (When an action is initiated by the custodial parent, the agency will establish arrears beginning as of the date the custodial parent most recently applied for services).

- All other provisions of the Modified Administrative Child Support and Medical Support Order issued March 14, 2013 remain in full force and effect.

DATED this 30th day of May, 2013.

By: Signed
Rebecca L. Pauli
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 17th day of June, 2013.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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