

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

In The Matter of:)

C L. D)

) OAH No. 13-0453-CSS

) CSSD No. 001188528

DECISION AND ORDER

I. Introduction

This case involves obligor C L. D's appeal of an Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on January 18, 2013. The child in this case is U, age 15. The custodian of record is K D. D.

The formal hearing was held on April 25, 2013. Ms. D participated by phone, represented herself, and testified. Mr. D was contacted by phone but did not wish to participate. Child Support Specialist Andrew Rawls participated by phone and represented CSSD. The record was left open through May 20, 2013 for post-hearing filings. CSSD submitted a post-hearing filing but Ms. D did not.

When calculated according to Civil Rule 90.3 Ms. D's child support obligation for one child should be \$444 per month effective February 1, 2013 and ongoing with arrears in the amount of \$732 from November 2012 through January 2013.

II. Facts

A. Relevant Procedural History

Mr. D applied for Temporary Assistance to Needy Families (TANF) benefits for U, prompting CSSD to initiate proceedings to establish child support for the child. On December 6, 2012 CSSD issued an order requiring Ms. D to provide information concerning her income and medical insurance so that child support could be established.¹ Ms. D did not respond.² Because she did not provide the information requested, CSSD based its child support calculation on Ms. D's 2012 Alaska Department of Labor (DOL) reported earnings for 2012 plus the 2012 Alaska Permanent Fund Dividend (PFD). Using this income amount (\$16,259.89), CSSD issued an order establishing Ms. D's monthly child support obligation for one child, effective November 1, 2012

¹ Ex. 1.

² Ex. 2 p. 4.

and ongoing, to be \$244 per month.³ Ms. D requested an administrative review of CSSD's initial determination.⁴ On March 18, 2013, CSSD affirmed its original decision.⁵ On March 25, 2013, Ms. D appealed CSSD's Administrative Review Decision.⁶

*B. Material Facts*⁷

Ms. D and Mr. D are the parents of U, currently 15 years old. The parties live in different villages and Mr. D currently has primary custody of U.

Ms. D currently works full time as a personal care assistant (PCA) at an assisted living facility (ALF). She believes this is a stable job and expects to remain employed at the ALF indefinitely. She currently earns \$14.00 per hour. Her current work hours are "crazy" and she sometimes works 12 hour shifts. In addition to her wages from employment Ms. D receives an annual Alaska Permanent Fund dividend, and an annual dividend from Doyon Limited that averages \$1,004 per year.⁸ For the first quarter of 2013 Ms. D earned \$8,956.50. In 2012, her income from all sources totaled \$16,181.79.⁹

Ms. D lives in a one bedroom house with her father and with a 25 year old son, from another relationship, who is disabled.¹⁰ She pays the electric, water, and wastewater utilities, which together average about \$300.00 per month. She pays \$75 per month for cell phone service, and sometimes pays her father's cable TV bill (about \$55 per month) and his cell phone bill (about \$25 per month). She usually spends about \$300 - \$400 per month for food and about \$42 per month for personal care items. She spends about \$40 per month for cigarettes and about \$50.00 per month for alcoholic beverages. Altogether Ms. D's monthly expenses total about \$987 per month.

Ms. D testified that she sends \$50 to \$100 to U almost every week, and that these payments are reflected on her bank statements. However, Ms. D did not provide copies of her bank statements or any other documentation of these voluntary payments.

Ms. D owns a house in which her sister is living. Ms. D receives no rental income from the house; her sister lives there rent free, but pays for all necessary utilities. Ms. D has plans to purchase another home in the future because her father's house is too small for her family, especially were U to come live with her.

³ Ex. 2.

⁴ Ex. 3.

⁵ Ex. 5.

⁶ Ex. 6.

⁷ All information in this section is taken from Ms. D's hearing testimony unless otherwise noted.

⁸ Ms. D did not challenge the amount of dividend included as income.

⁹ Ex. 11. This includes unemployment insurance and dividends.

Records obtained by CSSD from the Department of Labor and Workforce Development (DOL) indicate that Ms. D earned gross wages of \$10,395.27 in 2010; \$14,263.14 in 2011; and \$13,322.79 in 2012.¹¹ Ms. D earned gross wages of \$8,956.50 during the first quarter of 2013; this extrapolates to estimated gross annual income of \$35,826 for 2013. In addition, Ms. D received unemployment insurance benefits (UIB) of \$1,694 in 2010; \$1,846 in 2011; and \$1,566 in 2012.¹² Ms. D also receives an annual dividend from Doyon Limited. She did not provide information as to the amount of Doyon's recent annual distributions, but CSSD obtained information indicating recent average dividends of \$1,004,¹³ and Ms. D did not dispute that figure. Finally, Ms. D receives the Alaska Permanent Fund dividend; CSSD has estimated the average amount of the dividend at \$878,¹⁴ and Ms. D did not dispute that figure.

III. Discussion

Ms. D challenges the amount of support determined by CSSD, not because paying it would necessarily cause a hardship, but because she would like it to be less. Ms. D would also like a credit for the money sent to U. As the person who filed the appeal in this case, Ms. D has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's Administrative Child Support and Medical Support Order dated January 18, 2013 is incorrect.¹⁵

A parent is obligated both by statute and at common law to support his or her children.¹⁶ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." When calculating ongoing child support, determining an obligor's annual income for purposes of child support is "necessarily... speculative because the relevant income figure is expected future income."¹⁷ However, child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. When calculating arrears, the regulations define income as the actual annual income that the parent earned or received each calendar year for which arrears are sought to be established.

Ms. D does not dispute the 2012 earnings used by CSSD in its calculation of arrears. Accordingly, Ms. D has not met her burden of proving that the 2012 calculation was in error.

¹⁰ Ms. D's 25 year old son receives disability payments and is financially independent.

¹¹ Ex. 7 p. 1.

¹² Ex. 7 p. 2. This equates to an average of \$1,702 in UIB per year.

¹³ Exs. 10, 11, 12.

¹⁴ Exs 11, 12.

¹⁵ 15 AAC 05.030(h).

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁷ See Civil Rule 90.3, Commentary III.E.

Because it is based on actual income it is presumed to be correct. Therefore, Ms. D's child support obligation from November 1, 2012 through January 31, 2013 should be \$732.

Applying the legal principals set out above, Ms. D's ongoing child support should be based on her anticipated earnings for 2013. The unchallenged evidence establishes that Ms. D earns \$14 per hour. The record is less clear as to whether overtime is expected and should be considered for purposes of ongoing child support. For this reason it is appropriate use Ms. D's hourly wage of \$14 and a 40 hour per week schedule when calculating wages for purposes of child support. This results in annual earnings in the amount of \$29,120. When added to the PFD and other non-taxable income, her total gross income for 2013 is anticipated to be \$31,591. After the standard deductions, when calculated pursuant to Civil Rule 90.3(a), Ms. D's monthly child support for one child should be \$444 effective February 1, 2013 and ongoing. The worksheet showing the calculation has been labeled as Attachment A and is attached to this decision.

Finally, Ms. D requests a credit for monies she testified were sent directly to U. 15 AAC 125.105(b) states that, when calculating arrears, credit must be given for "direct payments made by or on behalf of the obligor *directly to the custodial parent* " [emphasis added] and that, "[i]n order for the obligor to receive credit for direct payments, evidence must show a likelihood . . . that the direct payment was actually made to the custodial parent for the period for which arrears are being calculated and that the direct payment was intended by both parents to be a direct payment of child support." In this case the payments were made to U rather than to Mr. D, and there is no evidence in the record that Mr. D agreed that these payments should be treated as child support. Accordingly, Ms. D may not receive a direct credit for those payments.

IV. Conclusion

Based on evidence not previously contained in the record and obtained through the hearing process, Ms. D's monthly child support for one child should be \$444 effective February 1, 2013 and ongoing. She also should pay arrears of \$244 per month from November 2012 through January 2013 (\$732 total). These figures were 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.

V. Child Support Order

- C D is liable for child support arrears for one child in the amount of \$244 per month from November 1, 2012 through January 31, 2013 (\$732 total), and for ongoing child support of \$444 per month effective February 1, 2013 and ongoing.

- All other provisions of the Administrative Child Support and Medical Support Order dated January 18, 2013 remain in full force and effect.

DATED this 10th day of June, 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 28th 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.]