



On March 29, 2013 CSSD issued an Administrative Review Decision and an Amended Administrative Child and Medical Support Order.<sup>6</sup> Based on the financial information provided by Mr. D, and birth certificates indicating that he was supporting a wife and two children from a prior relationship in his household, CSSD reduced Mr. D's ongoing monthly child support obligation to \$236.<sup>7</sup> CSSD's amended support order was based on Mr. D receiving adjusted annual income of \$2,143 in 2012, and estimated adjusted annual income of \$14,142.84 in 2013.<sup>8</sup>

Mr. D appealed CSSD's Administrative Review Decision on April 19, 2013.<sup>9</sup> He asserted CSSD's support award was excessive given that his working hours had been reduced, and given that he has a wife and two children from a prior relationship to support.<sup>10</sup>

*B. Material Facts*<sup>11</sup>

Mr. D and Ms. T are the parents of P, age 13.<sup>12</sup> Ms. T has physical custody of P.<sup>13</sup> Mr. D has two other children (L, age 14, and F, age 11) from a prior relationship in the home.<sup>14</sup>

Mr. D is in his early 40s and his health is currently good. He came to Alaska in August 2012. He lives with his wife and children, L and F. He has previously worked in the construction industry and as a taxi driver. Since coming to Alaska he has worked in the housekeeping/janitorial field. He currently earns \$10.71 per hour and works four days per week from 9:00 a.m. to 4:00 p.m. He generally works 29 hours per week. His wife works for the same company and receives the same pay and number of hours. They previously worked more hours, but their employer recently cut back their hours due to a decrease in the amount of work available. Their employer expects that this work reduction will last through the end of the year.<sup>15</sup>

Mr. D's monthly living expenses consist of \$775 for rent, \$60 for electricity, \$70 for phone service, \$400 for food, and \$80 for tobacco. He does not own a car, but carpools and pays \$80 - \$100 per month for gas. He also has credit card bills and pays \$300 - \$400 per month toward those.

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<sup>6</sup> Ex. 7.

<sup>7</sup> Ex. 7 pp. 1 - 9. CSSD set Mr. D's support obligation at \$50 per month for November and December 2012, increasing to \$236 per month effective January 2013.

<sup>8</sup> Ex. 7 pp. 10 - 11.

<sup>9</sup> Ex. 8.

<sup>10</sup> Ex. 8.

<sup>11</sup> All information in this section is taken from Mr. D's hearing testimony unless otherwise noted.

<sup>12</sup> Ex. 1 p. 7.

<sup>13</sup> Ex. 1 p. 7.

<sup>14</sup> Ex. 6 pp. 6 - 7, H D hearing testimony. The copies of L and F's birth certificates contained in the record have a poor copy quality and are difficult to read. However, it appears that although L is older than P, F is younger, so technically only L is a child from a prior relationship.

<sup>15</sup> Ex. 8 p. 2, H D hearing testimony.

Mr. D's expenses thus total about \$1,765 - \$1,885 per month. Based on his household's income and expenses, Mr. D suggested that his monthly child support obligation be set at \$150.

Ms. T has asthma, high blood pressure, and diabetes.<sup>16</sup> Her household consists of herself, her 23 year old daughter, and P. Ms. T's household's primary income consists of her wages and her 23 year old daughter's unemployment insurance benefits.<sup>17</sup> Ms. T previously worked full time, but due to her health she now works four hours per day.<sup>18</sup> Her current monthly gross wages total \$787.<sup>19</sup> She receives free medical services but does not currently receive Food Stamps or cash assistance. She sometimes also receives financial assistance from her parents, siblings, and her daughter's boyfriend. Ms. T's expenses total approximately \$780 per month.<sup>20</sup>

State records indicate that Mr. D had gross income of \$3,130 in 2012.<sup>21</sup> CSSD calculated that Mr. D's child support obligation for 2012, based on gross income of \$3,130, is \$50 per month.<sup>22</sup> Pay statements from Mr. D's employer indicate that in January 2013 his gross wages were \$1,606.50.<sup>23</sup> This extrapolates to anticipated annual gross income of \$19,278 for 2013. At hearing, CSSD calculated that Mr. D's child support obligation for 2013, based on his current hourly wage of \$10.71 and employment at 29 hours per week, is \$182.00 per month.

### **III. Discussion**

#### *A. Mr. D has the Burden of Proof*

Mr. D appeals CSSD's Administrative Review Decision dated March 29, 2013 on the basis that CSSD's ongoing child support award of \$236 per month is excessive. As the person who filed the appeal in this case, Mr. D has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's Administrative Review Decision is incorrect.<sup>24</sup>

#### *B. The Legal Basis of Mr. D's Child Support Obligation*

A parent is obligated both by statute and at common law to support his or her children.<sup>25</sup> A parent's duty of support begins on the child's date of birth.<sup>26</sup> In those cases in which the child

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<sup>16</sup> All information in this paragraph is taken from Ms. T's hearing testimony unless otherwise noted.

<sup>17</sup> Ms. T's 23 year old daughter was previously employed, but the company she worked for closed, and she is currently unemployed. The daughter is now looking for work and helping out around the house.

<sup>18</sup> All information in this paragraph is taken from Ms. T's hearing testimony unless otherwise noted.

<sup>19</sup> Ex. 1 p. 18.

<sup>20</sup> Ex. 1 p. 19.

<sup>21</sup> Ex. 9.

<sup>22</sup> Ex. 7 p. 10.

<sup>23</sup> Ex. 5 pp. 8, 10.

<sup>24</sup> 15 AAC 05.030(h).

<sup>25</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

<sup>26</sup> *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938

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.<sup>27</sup>

In Alaska, the rules for calculating child support are contained in Civil Rule 90.3. How support is calculated depends upon the type of custody exercised by the parents of the children.<sup>28</sup> 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 adjusted annual income by the percentage specified in Civil Rule 90.3 applicable to the number of children for whom support must be paid.<sup>29</sup> In order to calculate a child support award for a single child, the non-custodial parent's adjusted annual income must be multiplied by 20%.<sup>30</sup>

*C. What is the Correct Amount of Child Support to be Paid?*

Applying the child support formula to this case, the first step is to determine Mr. D's annual income. Mr. D did not dispute that his gross annual income was \$3,130 for 2012, and is expected to be \$16,150.68 for 2013.<sup>31</sup> Accordingly, these annual income figures are adopted.

The next step is to subtract any applicable deductions from Mr. D's gross income. The resulting number is referred to as adjusted annual income. Based on Mr. D's status as a wage earner, he is entitled to deductions from gross income for federal income taxes, FICA (Social Security and Medicare taxes), and SUI (unemployment insurance).<sup>32</sup> He is also entitled to a deduction for the cost of maintaining his 14 year old daughter L in his home.<sup>33</sup> To arrive at the "prior child" deduction, CSSD performs a one-child calculation using Mr. D's gross income and deductions. The result, in this case \$52.17 per month for 2012 and \$269.18 per month for 2013, then becomes an additional deduction from Mr. D's income.<sup>34</sup> Applying all of these deductions results in adjusted gross annual income of \$2,306.44 for 2012 and \$10,960.08 for 2013.<sup>35</sup>

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P.2d 1013, 1015 (Alaska 1997).

<sup>27</sup> 15 AAC 125.105(a)(1)-(2).

<sup>28</sup> Civil Rule 90.3(a), (b) (recognizing four types of custody [primary, shared, divided, and hybrid] and identifying a calculation for each type). *See also* Civil Rule 90.3(f) (defining types of custody).

<sup>29</sup> Civil Rule 90.3(a)(2).

<sup>30</sup> Civil Rule 90.3(a)(2)(a).

<sup>31</sup> A wage of \$10.71 per hour, multiplied by 29 hours per week, multiplied by 52 weeks per year, equals \$16,150.68.

<sup>32</sup> Civil Rule 90.3(a)(1)(A).

<sup>33</sup> Official Commentary to Civil Rule 90.3 at Section III(D).

<sup>34</sup> Official Commentary to Civil Rule 90.3 at Section III(D).

<sup>35</sup> See 2012 and 2013 calculation sheets, attached to this decision as Exhibits 1 and 2, respectively.

The next step is to multiply Mr. D's annual adjusted income figures for 2012 and 2013 by 20%. Twenty percent of Mr. D's 2012 adjusted income is \$192.20 per year, or \$16.02 per month. However, under Civil Rule 90.3(c)(3), the minimum child support amount that may be ordered is \$50 per month. Accordingly, CSSD correctly determined Mr. D's 2012 child support to be \$50 per month.

Twenty percent of Mr. D's 2013 estimated adjusted income is \$2,192.02 per year, or \$182.67 per month. When rounded to the nearest dollar, the figure is \$183. This is the monthly child support amount payable by Mr. D effective January 1, 2013 and ongoing.

The final step is to determine whether there is good cause to increase or decrease the \$183 figure, under Civil Rule 90.3(c)(1). Good cause may be established by a finding that unusual circumstances or financial hardship exist in a particular case. In order to reduce the support award from \$183, Mr. D would have to prove by clear and convincing evidence that manifest injustice would result if the support award were not varied. The facts of this case indicate that both parties are equally stretched financially. Accordingly, there is no basis on which to increase or decrease the \$183 figure under Civil Rule 90.3(c)(1).

#### **IV. Conclusion**

Mr. D met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order of March 29, 2013 was incorrect. Mr. D's 2012 support obligation was correct at \$50 per month, but Mr. D's 2013 support obligation was incorrect. The 2013 amount is now correctly calculated at \$183 per month, effective January 1, 2013 and ongoing. These figures should be adopted. There was an implicit request for a variance under Civil Rule 90.3(c) in this appeal, but that request was denied.

#### **V. Child Support Order**

- Mr. D is liable for child support for P in the amount of \$50 per month for November 2012 and December 2012, and \$183 per month effective January 1, 2013 and ongoing.
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated March 29, 2013 remain in full force and effect.

DATED this 23<sup>rd</sup> day of August, 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 10<sup>th</sup> day of September, 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.]