

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

| | | |
|-------------------|---|---------------------|
| In the Matter of: |) | |
| |) | OAH No. 13-0732-CSS |
| S D. U |) | CSSD No. 001176103 |
| _____ |) | |

DECISION AND ORDER

I. Introduction

S D. U appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 12, 2013. The obligee child is B, 7. The other party to the case is F J. C.

The hearing was held on June 13th and June 24th of 2013. Both parties participated by telephone. Russell Crisp and Erinn Brian, Child Support Specialists, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. U's child support is set at \$83 per month, effective April 1, 2012, and ongoing. Ongoing support is suspended as of January 2013, based on Ms. C's withdrawal from services. In the event ongoing child support is reinstated, Mr. U is entitled to a credit for direct payments to Ms. C in the amount of \$50 per month from January 2013 through May 2013.

II. Facts

Ms. C applied for child support services for B in April 2012.¹ Her application included a statement that she and Mr. U exercised shared custody of the child – that Ms. C had B four overnights per week and Mr. U had the child three overnights per week.²

CSSD initiated a child support action against Mr. U and issued an Administrative Child Support and Medical Support Order on July 20, 2012.³ Mr. U was not served with notice of the action, so the case languished somewhat. Ms. C withdrew from services on December 11, 2012.⁴ Mr. U was served on January 9, 2013 and he filed a request for an administrative review on January 25, 2013.⁵

¹ Exh. 1.
² Exh. 1 at pg. 6.
³ Exh. 4.
⁴ Exh. 5.
⁵ Exhs. 6-7.

On April 12, 2013, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. U's child support at \$259 per month, beginning in April 2012.⁶ For that calculation, CSSD used an income amount of \$16,469, which CSSD stated was derived from averaging his 2011 and 2012 income figures.⁷ Prior to the hearing, CSSD acknowledged in its Pre-Hearing Brief that the agency had inadvertently failed to calculate a shared custody support amount, even though the parties consistently stated they exercise shared custody of B. CSSD then prepared a revised calculation based on the parties exercising shared custody on a 53/47 percentage basis, with Ms. C having B 53% of the overnights and Mr. U having custody of B 47% of the overnights. The result is a child support amount of \$82.73 per month, which was rounded to the nearest dollar, or \$83 per month.⁸

At the hearing, the parties verified that they exercise 53/47 custody of B. They also both testified that Mr. U had been paying Ms. C \$50 per month for child support for five months, beginning in January 2013. CSSD did not challenge the parties' testimony.

III. Discussion

The issues presented for resolution in this appeal are not complicated. The parties claim they exercise shared custody on a 53/47 basis. CSSD conceded that the agency failed to perform a shared custody calculation with its amended order, and submitted the calculation prior to the hearing that obligates Mr. U to pay \$83 per month. Both Mr. U and Ms. C agreed this figure was correct, but they both had reservations about accepting it because of the other item discussed at the hearing.

The other issue involves Ms. C's withdrawal from services in December 2012. Neither party wanted to go forward with the hearing because of the withdrawal. However, CSSD was correct to refer the obligor's appeal to the Office of Administrative Hearings (OAH) for completion of the establishment process. Under CSSD regulation 15 AAC 125.105(a)(3)(A), if an applicant for child support services withdraws the application before the noncustodial parent has been served with notice of the action, CSSD may terminate child support, but only if the

⁶ Exh. 8 at pg. 10.

⁷ Exh. 8 at pg. 9. *See* Exh. 3, in which he reported income of \$20,816 in 2011 and \$10,948 in 2012. The total of these two figures (\$31,764), when divided by two, equals \$15,882. This is not the figure CSSD used, perhaps because he received additional income in 2012. CSSD did not explain how it reached the average income figure. In any event, Mr. U did not object to this income amount, so it will be accepted.

⁸ Exh. 10.

child has not been receiving public funds such as public assistance, foster care, or was in state placement.

In this case, even though Mr. U had not yet been served with notice of the child support action by the time Ms. C withdrew from services, she had previously placed B on Medicaid, so under the above regulation, CSSD was required to complete the child support establishment process. However, because Ms. C then withdrew from services in December 2012, Mr. U's ongoing child support will be suspended as of January 2013, and will not be collected unless and until Ms. C once again applies for services.⁹ If she reapplies and the child support obligation beginning January 2013 is reinstated, that is when Mr. U will be credited with the \$50 per month payments he made from January 2013 through May 2013. So at least from January 2013 through May 2013, he will have a balance of only \$34 per month for each of those months.

IV. Conclusion

Mr. U met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. The parties exercise shared custody of B on a 53/47 percent basis, so Mr. U's child support is correctly calculated at \$83 per month using the shared custody formula. This figure was calculated pursuant to Civil Rule 90.3, without variation, and it should be adopted.

Ms. C withdrew from services in December 2012, so Mr. U's ongoing child support should be suspended as of January 2013. Finally, Mr. U paid child support directly to Ms. C in the amount of \$50 per month from January 2013 through May 2013, so he is entitled to a credit in that amount for each of those months. However, ongoing child support has been suspended as of January 2013, so in the event Ms. C reapplies for child support, Mr. U's support obligation will be reinstated and he will receive the credit at that time.

V. Child Support Order

- Mr. U is liable for child support for B in the amount of \$83 per month, effective April 1, 2012;
- Mr. U's ongoing child support is suspended as of January 1, 2013, based on Ms. C's withdrawal from services;

⁹ 15 AAC 125.870(d)(2).

- In the event ongoing child support is reinstated, Mr. U is entitled to a credit for paying support directly to Ms. C in the amount of \$50 per month from January 2013 through May 2013;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated April 12, 2013 remain in full force and effect.

DATED this 13th day of August, 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 30th day of August, 2013.

By: *Signed* _____
 Signature
 Kay L. Howard _____
 Name
 Administrative Law Judge _____
 Title

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