

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

In the Matter of:)	
)	OAH No. 13-1136-CSS
T Y. O)	CSSD No. 001185365
_____)	

DECISION AND ORDER

I. Introduction

The obligor, T O, appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on July 16, 2013. The obligee child is M, age 4.¹

The hearing was held on September 16, 2013. Mr. O, K O, the custodial parent, and Erinn Brian, Child Support Specialist, who represented CSSD, all participated telephonically.

After the hearing was held, Mr. O submitted additional financial information and CSSD submitted its written analysis of that additional information.

Based on the evidence and after careful consideration, Mr. O's child support obligation is set at \$223 per month beginning in July 2012. He is not liable for child support from November 2012 through April 2013 because the child was residing with him. He is liable for ongoing child support in the amount of \$223 per month beginning in May 2013.

II. Facts

A. Procedural Background

Ms. O began receiving public assistance benefits on M's behalf in July 2012.² On December 12, 2012, CSSD established Mr. O's child support obligation for M in an Administrative Child Support and Medical Support Order that set his child support amount at \$245 per month effective January 1, 2013; it included child support arrearages in the total amount of \$1,470 (\$245 per month) for the period from July 2012 through December 2012.³ Mr. O requested an administrative review on January 30, 2013.⁴ On July 16, 2013, CSSD issued an Administrative Review Decision and Amended Administrative Child Support and Medical

¹ Ex. 5.
² Ex. 5, p. 11.
³ Ex. 1.
⁴ Ex. 3.

Support Order that set Mr. O's ongoing child support at \$849 per month, effective August 1, 2013, with arrearages in the amount of \$5,943 for July 1, 2012 through July 31, 2013.⁵ Both the arrearages and the ongoing support amount were based upon the receipt of a PFD and the Division's calculation that Mr. O had \$51,322 in self-employment income.⁶

Mr. O appealed on August 1, 2013; his appeal documents included a profit and loss statement showing that his net self-employment income for the first six months of 2013 was \$5,939.30.⁷

B. Material Facts

Mr. O is a part-time student who also works part-time as a self-employed car dealer. His parents help support him. In 2011, he received \$40,900 in loans from his parents,⁸ and he had gross business receipts from selling cars of \$51,322 and expenses for car sales of \$37,422.⁹

Mr. O provided a transcript of his 2011 federal income tax return. He did not provide a copy of the original return, despite having been requested to do so at the hearing. The 2011 federal income tax return transcript showed, on Schedule C, gross receipts of \$51,322.00 and expenses of \$35,855, for a yearly profit of \$15,467.¹⁰

Mr. O also did not submit a copy of his 2012 federal income tax return. Instead, he provided a copy of only the very first page of the tax return transcript. That page, however, does not show any of his self-employment income, merely taxable interest of \$40 and his receipt of the PFD.¹¹ He also provided four pages of auction purchase agreements showing that he purchased four autos for his automobile sale business in January and February 2013 for a total cost to him of \$18,500.¹²

Ms. O, the custodial parent, received Alaska Temporary Assistance program benefits for M from July 2012 through October 2012. Ms. O and M lived in Mr. O's household from November 2012 through April 2013.¹³

⁵ Ex. 5. The arrearages were arrived at based upon a monthly child support obligation of \$849 for a period of seven months since the child was with Mr. O during the months of November 2012 through April 2013. Ex. 5, p. 11.

⁶ Ex. 5, p. 10.

⁷ Ex. 6, pp. 1 – 2.

⁸ T O testimony. The Division did not challenge Mr. O's testimony on this point.

⁹ Ex. 4, pp. 2, 10.

¹⁰ Ex. 4, p. 8.

¹¹ Ex. 8, p. 11.

¹² Ex. 8, pp. 7 – 10.

¹³ Ex. 5, p. 11.

CSSD submitted new calculations after the hearing. They used Mr. O's gross business receipts of \$51,322, as listed on the Schedule C portion of his 2011 federal income tax return transcript, and his 2012 PFD of \$878, to arrive at a gross income of \$49,207.08, with a resultant child support obligation of \$820 per month.¹⁴ CSSD did not allow Mr. O any of his Schedule C expenses that totaled \$35,855.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁵ CSSD initially set Mr. O's child support amount at \$245 per month, based on his self-employment income of \$15,467 and the PFD.¹⁶ After he requested an administrative review, it increased that support amount to \$845 per month, based on self-employment income of \$51,322 and the PFD. After the hearing, CSSD submitted a revised calculation showing an obligation of \$820 per month, which it calculated using Mr. O's self-employment income of \$51,322 and the PFD. CSSD allowed the tax deductions from his 2011 federal income tax return, but the deductions were based on self-employment income of \$15,467, not \$51,322.¹⁷

CSSD's latest calculation is based on Mr. O's self-employment income of \$51,322, but it does not allow any of his listed business expenses of \$35,855. The Commentary to Civil Rule 90.3 provides that "[i]ncome from self-employment . . . includes the gross receipts minus the ordinary and necessary expenses required to produce the income."¹⁸ CSSD's disallowance of the claimed business expenses is based on the fact that Mr. O did not supply copies of his complete federal tax returns, merely the transcript for 2011 and the first page of the 2012 tax return transcript, and because he did not provide substantiation of his claimed expenses. However, CSSD should have accepted Mr. O's 2011 federal income tax return transcript because it provides a line item replication of the amounts listed on the original tax return that Mr. O filed with the IRS.

¹⁴ Ex. 10.

¹⁵ AS 25.27.190(e).

¹⁶ This amount was calculated as though Mr. O's income consisted of W-2 wages, and not as self-employment income. Ex. 1, p. 8.

¹⁷ CSSD's calculations are located at Ex. 10, pp. 1 – 2. The 2011 federal tax return transcript showing self-employment income of \$15,467 is located at Ex. 4, pp. 3 – 9. There is a self-employment tax deduction of \$1,093 (p. 4) and total federal tax of \$1,900 (p. 6).

¹⁸ Commentary to Civil Rule 90.3, § IIIB.

The secondary issue with regard to Mr. O's evidence is whether CSSD should have accepted the *amount* of Mr. O's deductions in the absence of sufficient documentation. Mr. O's business expenses, although relatively high, are not unreasonable given the type of expenses he must expend to acquire inventory, as demonstrated by the \$18,500 he spent to purchase four vehicles for sale in January and February 2013. Accordingly, CSSD should have deducted the Schedule C business expenses of \$35,855 from his gross receipts of \$51,322.00 to arrive at self-employment income of \$15,467.¹⁹

CSSD should have calculated Mr. O's child support payment by using Mr. O's self-employment income of \$15,467, a 2012 PFD of \$878, and allowing the same monthly deductions for federal income tax of \$158.33 and self-employment tax of \$91.08, as reflected in Mr. O's 2011 federal income tax return.²⁰ The resulting child support amount should be \$223 per month for 2012.²¹ Applying that same methodology for 2013, but using the 2013 PFD amount of \$900, yields the same result.

IV. Conclusion

Mr. O proved by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. Mr. O's child support obligation should have been set at \$223 per month beginning in July 2012. He is not liable for child support from November 2012 through April 2013 because the child was residing with him during that time. He is liable for ongoing child support in the amount of \$223 per month beginning in May 2013. The support amount was calculated pursuant to Civil Rule 90.3 without variation under Civil Rule 90.3(c).

V. Child Support Order

- Mr. O is liable for modified ongoing child support for M in the amount of \$223 per month for the period from July 2012 through October 2012 and from May 2013 forward.

¹⁹ CSSD erroneously classified Mr. O's self-employment income as W-2 wages and did not include the additional deduction for self-employment social security taxes when it calculated his original monthly child support payment of \$245 on December 12, 2012. Ex. 1, p. 8.

²⁰ This is the same methodology CSSD used in the calculations it submitted after the hearing, although CSSD used federal tax deductions based upon self-employment income of \$15,467, whereas to be consistent with its argument that Mr. O had self-employment income of \$51,322, it should have used deductions based upon that higher income. See Ex. 10, pp. 1 – 2.

²¹ Attachment A.

- Mr. O is not liable for paying support through CSSD from November 2012 through April 2013 because the child was living with him and he was a custodial parent.
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated July 16, 2013, remain in full force and effect.

DATED this 16th day of October, 2013.

Signed

Lawrence A. Pederson
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 18th day of November, 2013.

By: Signed

Signature
Angela M. Rodell

Name
Commissioner

Title

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