

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

In The Matter of: )  
 )  
 E D. Q ) OAH No. 13-1231-CSS  
 ) CSSD No. 001190779  
\_\_\_\_\_)

**DECISION AND ORDER**

**I. Introduction**

This case involves obligor E D. Q' appeal of an Amended Administrative Child and Medical Support Order issued by the Child Support Services Division (CSSD) on August 8, 2013. The child in this case is N, age ten months. The custodian is U A. M.<sup>1</sup>

Mr. Q asserts that the child support award of \$690 per month imposed by CSSD's order of August 8, 2013 is excessive given his current income level. Ms. M agrees. Based on new information obtained through the hearing process, CSSD also agrees, and has proposed a support obligation of \$346 per month. This decision concludes that Mr. Q' child support obligation for one child, based on his current income, and calculated according to Civil Rule 90.3(a), should be \$241 per month effective January 1, 2013 and ongoing. Accordingly, CSSD's Amended Administrative Child and Medical Support Order dated August 8, 2013 is reversed.

**II. Facts**

*A. Relevant Procedural History*

Ms. M applied for public assistance benefits for N in January 2013, prompting CSSD to initiate proceedings to establish child support for the child.<sup>2</sup> On June 5, 2013 Ms. M submitted a form seeking to withdraw from CSSD's services.<sup>3</sup> On June 12, 2013 CSSD issued an Administrative Child and Medical Support Order which established a support obligation of \$503 per month effective July 1, 2013.<sup>4</sup> CSSD's child support figure was based on annual gross income of

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<sup>1</sup> During a supplemental hearing held on October 9, 2013, Mr. Q and Ms. M confirmed on the record that the Office of Children's Services (OCS) took physical custody of N on or about August 16, 2013. However, this change in physical custody does not affect Mr. Q' ongoing support obligation; rather, it only affects which party receives the child support (*i.e.* Ms. M or OCS).

<sup>2</sup> Undisputed hearing testimony.

<sup>3</sup> Ex. 1 p. 1.

<sup>4</sup> Ex. 2 p. 1.

\$36,739.<sup>5</sup> CSSD's order also established arrears of \$2,165 for the period from January through June 2013.<sup>6</sup>

Mr. Q requested administrative review of CSSD's initial determination on July 3, 2013.<sup>7</sup> In support of his request, Mr. Q wrote that he was a seasonal worker, that he had not worked since April 21, 2013, and that he was living with Ms. M and N.<sup>8</sup>

CSSD issued its Administrative Review Decision (ARD) on August 8, 2013.<sup>9</sup> The ARD determined that Mr. Q owed \$3,699, as of July 10, 2013, based on past-due child support and public assistance paid on N's behalf.<sup>10</sup> The ARD set Mr. Q' ongoing child support obligation at \$690 per month beginning September 1, 2013. The child support figure was based on information from Mr. Q' employer indicating that he was paid \$35.94 per hour and worked 38.5 hours per week for 26 weeks per year. These figures resulted in estimated annual gross income of \$52,038.74. CSSD issued an Amended Administrative Child and Medical Support Order which incorporated the determinations made in the ARD.

Mr. Q appealed CSSD's Administrative Review Decision on September 6, 2013.<sup>11</sup> Mr. Q wrote that he had made less than \$25,000 the prior year, that his work was seasonal, and that he was not currently working. He also wrote that he had received \$186 in unemployment insurance benefits (UIB), but had paid it all back; that he had lived with Ms. M and N in May and June 2013 and had been included on their Alaska Temporary Assistance Program case; and that he had made car payments and insurance payments on Ms. M's behalf.<sup>12</sup>

The formal hearing began on September 30, 2013 and was concluded on October 9, 2013. Mr. Q and Ms. M participated by phone, represented themselves, and testified. Child Support Specialists Errin Brian and Russell L. Crisp participated by phone and represented CSSD. The record was left open through October 21, 2013 for post-hearing filings. The record closed on October 21, 2013 and the case became ripe for decision.

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<sup>5</sup> Ex. 2 p. 8.

<sup>6</sup> Ex. 2 p. 2.

<sup>7</sup> All factual findings in this paragraph are based on Ex. 6 unless otherwise noted.

<sup>8</sup> Ex. 4.

<sup>9</sup> Ex. 5.

<sup>10</sup> The ARD found that Mr. Q originally owed \$4,830, but it gave Mr. Q a direct payment credit of \$1,131 based on a letter from Ms. M. Subtracting \$1,131 from \$4,830 results in a net balance of \$3,699.

<sup>11</sup> All factual findings in this paragraph are based on Ex. 7 unless otherwise noted.

<sup>12</sup> Ms. M later confirmed at hearing that Mr. Q made these payments.

*B. Material Facts*<sup>13</sup>

Mr. Q and Ms. M are the parents of N, currently ten months old. The parties lived in different households until May 2013, when Mr. Q began residing with Ms. M and N. Mr. Q received public assistance benefits as part of Ms. M's household during May and June 2013. In July 2013 Mr. Q moved back out; he maintained a separate household during July and August 2013. On August 16, 2013 the State of Alaska Office of Children's Services (OCS) assumed physical custody of N. N was still in OCS custody as of October 9, 2013. Mr. Q and Ms. M married on September 3, 2013 and began living together again at that time.

Mr. Q has been incarcerated for six of the last ten years. He was most recently released from jail in December 2011. Within the last year he became a member of the No Name and began operating heavy equipment. During 2013 Mr. Q worked for five months, three months for one employer and two months for another. He was paid at six different wage rates during this time, from a low of \$18.00 per hour to a high of \$53.91 per hour.<sup>14</sup>

Information obtained by CSSD from the Alaska Department of Labor and Workforce Development (DOL) indicates that Mr. Q earned gross wages of \$2,922.93 in 2010, \$1,070 in 2012, and \$15,856.80 through the second quarter of 2013.<sup>15</sup> Based on that income CSSD calculated Mr. Q' child support obligation at \$4,153.49 per year, or \$346 per month.<sup>16</sup>

**III. Discussion**

Mr. Q has asserted three arguments in this appeal. First, he asserts that the child support award of \$690 per month imposed by CSSD's order of August 8, 2013 is excessive given his current income level. Second, he asserts that he should be given credit for (or not be charged child support during) the two months in which he was living with N and Ms. M. Third, he asserts that he should be given credit for money he has paid directly to Ms. M, and for payments made on her behalf to third parties (i.e. car payments and car insurance payments). Each of these arguments will be addressed below in the order stated. As the person who filed the appeal in this case, Mr. Q has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's order of August 8, 2013 is incorrect.<sup>17</sup>

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<sup>13</sup> All information in this section is based on Mr. Q' or Ms. M's testimony unless otherwise noted.

<sup>14</sup> Ex. 7 pp. 2 - 3.

<sup>15</sup> Ex. 10.

<sup>16</sup> Ex. 11. This figure includes the Alaska Permanent Fund Dividend as income, but allows deductions for taxes, unemployment insurance, and union dues.

<sup>17</sup> 15 AAC 05.030(h).

A. *What is the Correct Amount of Monthly Child Support to be Paid by Mr. Q?*

A parent is obligated both by statute and at common law to support his or her children.<sup>18</sup> A parent's duty of support begins on the child's date of birth.<sup>19</sup> Where the child 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>20</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 child or children.<sup>21</sup> Under Civil Rule 90.3(a)(1), where (as here) the custodial parent has primary physical custody of the children,<sup>22</sup> the first step in calculating child support is to determine the non-custodial parent's gross income. The second step is to subtract any applicable deductions from the gross income; the resulting number is referred to as adjusted income. The third step is to multiply the non-custodial parent's adjusted income by the percentage specified in Civil Rule 90.3 applicable to the number of children for whom support must be paid.<sup>23</sup> In order to calculate a child support award for one child, the non-custodial parent's adjusted income must be multiplied by 20%.<sup>24</sup>

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."<sup>25</sup>

The revised calculation submitted by CSSD on October 3, 2013, which resulted in a monthly support payment of \$346, states in its *Comments* line that it was based on Mr. Q' "last paystubs provided through 8/13 and PFD." However, Mr. Q' testimony at the first hearing was that he had not applied for the current year's PFD. Also, basing the calculation on Mr. Q' last paystubs by themselves is not representative of his average wage rate, because in 2013 Mr. Q was paid at six different wage rates from \$18.00 per hour to \$53.91 per hour.<sup>26</sup>

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<sup>18</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>19</sup> *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

<sup>20</sup> 15 AAC 125.105(a)(1)-(2).

<sup>21</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>22</sup> In this case, Ms. M had primary physical custody of N until August 16, 2013.

<sup>23</sup> Civil Rule 90.3(a)(2).

<sup>24</sup> Civil Rule 90.3(a)(2)(A).

<sup>25</sup> *See* Civil Rule 90.3, Commentary III.E.

<sup>26</sup> Ex. 7 pp. 2 - 3.

The most reliable earnings information available for Mr. Q is DOL's gross earnings summary for the first two quarters of 2013.<sup>27</sup> That summary indicates that Mr. Q' gross earnings for the first half of 2013 totaled \$15,856.80. Extrapolating that half year's earnings to a full year results in gross annual earnings of \$31,713.60. However, Mr. Q testified that his employment was seasonal, and that, as of the end of September, he had worked for five months (or 55.6% of the time). There is no testimony in the record indicating that Mr. Q will work a lesser percentage of the time over the rest of the year. Accordingly, the preponderance of the evidence indicates that Mr. Q will earn 55.6% of \$31,713.60, or \$17,618.66, through the end of 2013. Applying the Civil Rule 90.3 child support formula for one child to this earnings figure results in a child support obligation of \$2,896.49 per year, or \$241 per month.<sup>28</sup> Based on the applicable law, this is the correct amount of child support to be paid by Mr. Q based on his current income.

*B. What Child Support is due for May 2013 and June 2013?*

Mr. Q and Ms. M both testified at the first hearing that Mr. Q was living with N and Ms. M during May 2013 and June 2013 and helping to pay household expenses. Records of the household's participation in the Food Stamp program support this testimony,<sup>29</sup> and the CSSD hearing representative did not contest this. Accordingly, Mr. Q has no support obligation for May 2013 and June 2013. Stated differently, Mr. Q should be given two month's credit, at \$241 per month, toward his past-due child support, because the family was intact during May 2013 and June 2013.

*C. What is the Amount of Credit to be Given Mr. Q for Direct Payments?*

Finally, Mr. Q requests a credit for monies he testified were paid directly to Ms. M or paid to third parties on her behalf. The parties have agreed that Mr. Q should receive a credit of \$1,131 for direct payments made to Ms. M, based on her letter of July 3, 2013.<sup>30</sup> Accordingly, Mr. Q is entitled to that credit.

Mr. Q also seeks credit for car and car insurance payments which he testified he made to third parties on Ms. M's behalf. Credit for these alleged payments is denied for several reasons. First, it is by no means clear that the documentation which Mr. Q submitted<sup>31</sup> supports a direct payment credit. Second, child support regulation 15 AAC 125.105(b) states that:

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<sup>27</sup> Ex. 10.

<sup>28</sup> See calculation sheet attached hereto as Attachment A.

<sup>29</sup> Ex. 7 p. 4.

<sup>30</sup> Ex. 6 pp. 2, 7. Credit for direct payments is governed by 15 AAC 125.105.

<sup>31</sup> Ex. 7 p. 5.

When calculating arrears ... the agency will give credit for direct payments made by or on behalf of the obligor *directly to the custodial parent* in the form of cash, a money order, a check made payable to the custodial parent, or a deposit or electronic funds transfer *to a bank or equivalent financial account held by the custodial parent*. In order for the obligor to receive credit for direct payments, evidence must show ... the direct payment was actually made *to the custodial parent*... [emphasis added].

Thus, pursuant to 15 AAC 125.105(b), in order for a payment to qualify for credit, it must be made directly to the custodial parent or the custodial parent's bank or financial account. In this case, Mr. Q made his alleged payments to the holder of the car loan and to the insurance company. Accordingly, Mr. Q may not receive a direct credit for those payments.

#### **IV. Conclusion**

Based on the evidence obtained through the hearing process, Mr. Q' monthly child support obligation for N should be \$241 effective January 1, 2013 and ongoing. However, Mr. Q has no support obligation for May 2013 and June 2013 because the family was intact during those two months. Finally, Mr. Q should receive \$1,131 in credit toward his past-due child support for support payments made directly to Ms. M. These figures were calculated pursuant to Civil Rule 90.3(a) 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**

- Mr. Q is liable for ongoing child support of \$241 per month effective January 1, 2013 and ongoing.
- Mr. Q has no support obligation for May 2013 and June 2013 because the family was intact during those two months.
- Mr. Q should receive \$1,131 in credit toward past-due child support owed.
- All other provisions of the Amended Administrative Child and Medical Support Order dated August 8, 2013 remain in full force and effect.

DATED this 25th day of October, 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 12<sup>th</sup> day of November, 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.]