

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

In the Matter of:)
)
 E S. C) OAH No. 13-1310-CSS
) CSSD No. 001149468
_____)

DECISION AND ORDER

I. Introduction

The custodial parent, A S. Q,¹ appeals a Modified Administrative Child and Medical Support Order issued by the Child Support Services Division (CSSD) on August 16, 2013.² CSSD's modification order decreased the monthly child support payable by the obligor parent, E S. C, from \$1,216 to \$283 effective July 1, 2013.³

Ms. Q asserts that Mr. C's child support obligation should not be reduced to the extent it was because (she asserts) (1) Mr. C earns more income than the modification order acknowledged; (2) Mr. C is behind in payment of his child support obligation; and (3) her two children need the extra support for orthodontic treatment, among other things.⁴

This decision concludes, based on information obtained through the hearing process, that the correct amount of child support payable by Mr. C, based on his most recent income, is \$491.00 per month for two children. Accordingly, CSSD's Modified Administrative Child Support and Medical Support Order dated August 16, 2013 is reversed. Mr. C's ongoing child support obligation is set at \$491 per month effective July 1, 2013 and ongoing.

II. Facts

A. Relevant Procedural History

On May 2, 2012 CSSD issued its original Administrative Child and Medical Support Order requiring payment of child support by Mr. C.⁵ On September 13, 2012 CSSD issued an Amended

¹ Ms. Q testified at hearing that she got married in March 2013, and it appears that Ms. Q's last name may recently have been changed to "J" (Ex. 7, pp. 1 - 3). However, because CSSD's records, and the referral form which initiated this case with this office, both refer to the custodial parent as "Q," this decision will also.

² Exs. 6, 7.

³ Ex. 1 p. 1; Ex. 6 p. 1.

⁴ Ex. 7 pp. 1 - 4, A Q hearing testimony.

⁵ Ex. 1 p. 1.

Administrative Child and Medical Support Order to correct a clerical error in the original order.⁶ The amended order set Mr. C's monthly child support obligation at \$1,216 per month effective June 1, 2012.⁷ This support obligation was based on annual gross income of \$69,148.40.⁸

On May 21, 2013 Mr. C submitted a child support modification request to CSSD.⁹ In his request, Mr. C stated that he had broken his ankle and had been unable to work from November 9, 2012 through April 10, 2013.¹⁰ Mr. C also wrote that he was earning \$15.00 per hour, and that he felt an appropriate monthly child support payment would be \$250 per child per month (\$500.00 per month total).¹¹

On August 16, 2013 CSSD granted Mr. C' modification request and issued a Modified Administrative Child and Medical Support Order that decreased Mr. C's ongoing child support obligation to \$283 per month, effective July 1, 2013.¹² This support obligation was based on annual gross income of \$19,598.00.¹³ Ms. Q appealed CSSD's modification decision on September 20, 2013.¹⁴

The formal hearing was held on October 14, 2013. Ms. Q participated in the hearing by phone, represented herself, and testified. Mr. C did not attend the hearing¹⁵ and could not be reached by phone.¹⁶ Child Support Specialist Russell L. Crisp participated in the hearing by phone and represented CSSD. The record closed at the end of the hearing on October 14, 2013.¹⁷

⁶ Ex. 1.

⁷ Ex. 1 p. 1.

⁸ Ex. 1 p. 7.

⁹ Ex. 2 p. 1.

¹⁰ Ex. 2 p. 1.

¹¹ Ex. 2 p. 1.

¹² Exs. 5, 6.

¹³ Ex. 6 p. 6.

¹⁴ Ex. 7.

¹⁵ The Office of Administrative Hearings (OAH) mailed a notice of hearing to Mr. C via certified mail, at his last known address, on September 27, 2013. The United States Postal Service (USPS) returned the notice to OAH on October 16, 2013; USPS notations indicate that notices of the mailing were left for Mr. C on September 28, October 3, and October 12, 2013, but that Mr. C failed to claim the mailing. Based on these facts, Mr. C received reasonable notice of the hearing under 15 AAC 05.030(g).

¹⁶ At hearing, the undersigned attempted to reach Mr. C at each of the three phone numbers listed on the case referral form. One number was disconnected or no longer in service, and a second number was in service, but was not answered and did not have voice mail enabled. The call placed to the third number went to voice mail, and a message was left on that number for Mr. C.

¹⁷ The undersigned waited ten days following the hearing before preparing the decision, in case Mr. C were to contact OAH, provide reasonable cause for his failure to appear at the hearing, and request a supplemental hearing. *See* 15 AAC 05.030(j). However, Mr. C never contacted OAH.

B. Material Facts

Mr. C and Ms. Q have two children: E, age 9, and T, age 11.¹⁸ Both children live outside Alaska with their mother, Ms. Q.¹⁹

Because Mr. C did not participate in the hearing, little is known about his present circumstances other than what he stated in his modification request and what CSSD was able to obtain through state records. In 2011 he worked for a snow removal service earning \$15.00 per hour.²⁰ The 2012 IRS Form W2 issued to Mr. C by the same snow removal company indicates that his gross earnings from that company were \$28,820.07 for 2012.²¹ Records obtained by CSSD from the Department of Labor and Workforce Development (DOL) indicate that Mr. C received gross wages of \$9,820.00 from the snow removal company during the second quarter of 2013.²² This is the most recent earnings information available for Mr. C.

Ms. Q's household consists of herself, her husband O, her sons E and T, and her nine year old nephew, whom she has raised.²³ Her husband is an electrician; his take-home (net) pay is about \$1,800 per month, or \$21,600 per year. Her husband has three minor children of his own for whom he pays \$900 per month in child support.

Ms. Q is currently attending college.²⁴ In addition, she is also working two part-time jobs. Her take-home (net) pay from those two jobs is about \$1,140 per month, or \$13,680 per year.

Ms. Q's family lives in an apartment and pays \$750 per month in rent. Her other main monthly expenses are \$800 for food, \$350 for gasoline for her car, \$133 for car insurance, \$33 for vehicle maintenance, \$145 for internet service and cable television, \$140 for electricity, refuse service, and water and wastewater service, \$100 for phone service, \$150 for clothing and personal care items, and \$200 for credit card and other revolving debt.

¹⁸ Ex. 1 p. 1; undisputed hearing testimony.

¹⁹ Ex. 1 p. 1; undisputed hearing testimony.

²⁰ Ex. 2 p. 2.

²¹ Ex. 2 p. 3.

²² Ex. 9.

²³ All factual findings in this paragraph are based on Ms. Q's hearing testimony unless otherwise stated.

²⁴ All factual findings in this paragraph are based on Ms. Q's hearing testimony unless otherwise stated.

III. Discussion

A. *The Burden of Proof is on Ms. Q as the Appellant*

As the person who filed the appeal in this case, Ms. Q has the burden of proving, by a preponderance of the evidence, that the child support amount established in CSSD's Modified Administrative Child Support and Medical Support Order dated August 16, 2013 is incorrect.²⁵

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

A parent is obligated both by statute and at common law to support his or her child.²⁶ A parent's duty of support begins on the child's date of birth.²⁷ In those cases in which 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.²⁸

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.²⁹ Under Civil Rule 90.3(a)(1), where (as here) the custodial parent has primary physical custody of the children, 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.³⁰ In order to calculate a child support award for two children, the non-custodial parent's adjusted income must be multiplied by 27%.³¹

C. *Modification of Child Support Awards*

Under Civil Rule 90.3, a child support award may be modified upon a showing of a material change of circumstances.³² A material change of circumstances will be presumed if the monthly child support payment, as calculated under Civil Rule 90.3, is more than 15 percent greater or less

²⁵ 15 AAC 05.030(h).

²⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

²⁷ *State of Alaska, Department of Revenue, Child Support Enforcement Division ex rel. Hawthorne v. Rios*, 938 P.2d 1013, 1015 (Alaska 1997).

²⁸ 15 AAC 125.105(a)(1)-(2).

²⁹ 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).

³⁰ Civil Rule 90.3(a)(2).

³¹ Civil Rule 90.3(a)(2)(B).

³² Civil Rule 90.3(h)(1).

than under the previous child support order.³³ Modifications are generally effective on or after the date that a motion for modification, or a notice of petition for modification, is served on the opposing party.³⁴

D. What is the Correct Amount of Child Support to be Paid by Mr. C?

The most recent full-year earnings information available for Mr. C is his 2012 Form W 2.³⁵ That document indicates that Mr. C's gross earnings for 2012 totaled \$28,820.07. Applying the Civil Rule 90.3 child support formula for two children to this earnings figure results in a child support obligation of \$5,886.06 per year, or \$491 per month.³⁶ Based on the applicable law, this is the correct amount of child support to be paid by Mr. C based on his current income.

IV. Conclusion

Based on information disclosed through the hearing process, Ms. Q met her burden and proved, by a preponderance of the evidence, that CSSD's Modified Administrative Child and Medical Support Order of August 16, 2013 was incorrect. Mr. C's child support obligation should be set at \$491 per month effective July 1, 2013. This figure was calculated under Civil Rule 90.3(a) and should be adopted. No variance under Civil Rule 90.3(c) was requested or granted.

V. Child Support Order

- Mr. C's child support obligation for E and T is set at \$491 per month effective July 1, 2013 and ongoing;
- All other provisions of the Modified Administrative Child and Medical Support Order dated August 16, 2013 remain in full force and effect.

DATED this 23rd day of October, 2013.

Signed _____
Jay Durych
Administrative Law Judge

³³ Civil Rule 90.3(h)(1).

³⁴ 15 AAC 125.321(d).

³⁵ Ex. 2 p. 3.

³⁶ Ex. 8.

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 12th 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.]