

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

In the Matter of:)
)
 K T) OAH No. 13-1395-CSS
) CSSD No. 001190536
_____)

DECISION AND ORDER

I. Introduction

K T appealed an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 18, 2013. The obligee child is H, 14 years old. This is a foster care case so the other party is the State of Alaska.

The hearing was held on October 31, 2013. Ms. T appeared in person; Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD's Amended Administrative Child Support and Medical Support Order is affirmed. Ms. T's child support is set at \$376 per month, effective April 2013 and ongoing. Additionally, Ms. T is entitled to a medical credit of \$63.64 per month, to be deducted from the calculated child support amount, beginning in April 2013, which CSSD is authorized to adjust as necessary in the future.

II. Facts

H was placed in foster care in April 2013. CSSD initiated a child support action against Ms. T and subsequently issued an Amended Administrative Child Support and Medical Support Order on September 18, 2013 that set her child support at \$376 per month, with arrears of \$2,256 going back to April 2013.¹ Ms. T appealed on September 30, 2013.²

Ms. T has been employed by No Name for several years. Her hourly wage is \$17.05.³ According to the Alaska Department of Labor and Workforce Development, she earned \$33,461.17 in 2012.⁴ However, Ms. T's income has been reduced in 2013. In working with the Office of Children's Services (OCS), Ms. T followed the caseworker's recommendation to reduce her workload to 30 hours per week. This has helped to mend her relationship with H, but it has also created financial difficulties for Ms. T because she has to pay child support while her daughter is in foster care.

¹ Exh. 5.

² Exh. 6.

³ Unless otherwise cited, the facts are taken from Ms. T's hearing testimony.

⁴ Exh. 8.

CSSD estimated Ms. T's 2013 earnings at \$26,598.⁵ Adding the PFD to her wages from employment results in total estimated income of \$27,476 for the year.⁶ When this annual income figure is inserted into CSSD's online child support calculator, it yields a child support amount of \$376 per month for one child.⁷ These 2013 figures are a correct measure of Ms. T's income and child support obligation for 2013.

In addition to paying support, Ms. T provides health insurance for H. The obligor provided documents that indicate she pays \$104.22 per month for major medical coverage, \$12.50 per month for dental insurance, and \$10.55 for vision coverage.⁸ The total of the coverage she pays per month is \$127.27. One half of that total is \$63.64.⁹

Ms. T's regular expenses total \$1,665 per month.¹⁰ She splits the rent payment of \$1,200 with a roommate and pays about \$400 per month for food. She does not have a car payment, nor does she have any credit cards. As discussed above, she carries health insurance on herself and H, and her other household expenses are fairly typical for Anchorage.

III. Discussion

The person who filed the appeal, in this case, Ms. T, has the burden of proving by a preponderance of the evidence that CSSD's support order is incorrect.¹¹

A parent is obligated both by statute and at common law to support his or her children.¹² In cases established by CSSD, the agency collects support from the date the custodial parent requests child support services, or the date public assistance or Medicaid benefits are initiated on behalf of the child.¹³ H entered foster care in April 2013, so that is the first month in which Ms. T is obligated to pay support for H through CSSD.

⁵ Exh. 5 at pg. 10. CSSD multiplied \$17.05 per hour x 30 hours per week x 52 weeks to get this result.

⁶ *Id.*

⁷ Exh. 5 at pg. 10.

⁸ Received on October 31, 2013 at the hearing. These documents have been marked as Exh. 9.

⁹ $\$127.27 \div 2 = \63.635 , which is rounded up to the next cent, or \$63.64.

¹⁰ Exh. 10. This exhibit number was applied to Ms. T's form after submission. It was originally marked as Exhibit 7, but that was the number of the blank form sent to her in CSSD's Prehearing Brief.

¹¹ 15 AAC 05.030(h).

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ 15 AAC 125.105(a)(1)-(2).

A. CSSD Correctly Calculated Ms. T's Child Support

CSSD has correctly estimated Ms. T's expected 2013 income at \$27,476, including the PFD, and these figures result in a child support amount of \$376 per month for one child.¹⁴ These figures are a correct measure of Ms. T's income and child support obligation for 2013.

B. Ms. T is Entitled to a Medical Credit

Civil Rule 90.3(d)(1)(B) provides that an obligor parent who provides health insurance for the child of an order is entitled to a deduction of 50% of the total monthly premium paid on behalf of the child. Ms. T established that she pays for health insurance for H in the total amount of \$127.27 per month, so she is entitled to a direct credit of \$63.64 per month to be deducted from her child support obligation. Typically this determination is referred back to the parent's caseworker at CSSD. However, Ms. T was extremely anxious about the process, so CSSD and the administrative law judge agreed to determine her credit at the hearing so that the amount of the credit could be inserted into this decision. It should be clear, however, that in the event Ms. T's premium amounts change in the future, CSSD is authorized to make the appropriate adjustments to her medical credit without a modification action being necessary.

C. Financial Hardship

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹⁵ It is appropriate to consider all relevant evidence, including the circumstances of the custodian and obligee child, to determine if the support amount should be set at a different level than provided for under the schedule in Civil Rule 90.3(a).¹⁶

Based on the evidence in its entirety, Ms. T did not prove by clear and convincing evidence that manifest injustice would result if the child support amount calculated under Civil Rule 90.3 were not varied. Granted, this child support obligation has had a significant impact on Ms. T's finances, but the requirement of showing by "clear and convincing evidence" that "manifest injustice" would result without a reduction in the child support amount is an extremely

¹⁴ Exh. 5 at pg. 10.

¹⁵ Civil Rule 90.3(c).

¹⁶ See Civil Rule 90.3, Commentary VI.E.1.

high burden. It is usually reserved for parents who are facing practically insurmountable odds. Although this is a difficult situation for Ms. T, she has not been able to prove that she is entitled to a discretionary reduction in her child support amount. She has had a medical credit applied at this stage of the process, so that in itself will speed up the correction of CSSD's collections from her wages. Therefore, Ms. T's child support amount calculated pursuant to Civil Rule 90.3 should not be lowered.

IV. Conclusion

Ms. T did not meet her burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. The child support amount is correct, and Ms. T is entitled to a medical credit of \$63.64 per month, beginning with the inception of this support obligation. Finally, Ms. T has not shown clear and convincing evidence of manifest injustice in the absence of an adjustment to her support amount, so the calculated amount should be adopted, without variation under Civil Rule 90.3(c).

V. Child Support Order

- The Amended Administrative Child Support and Medical Support Order dated September 18, 2013, is affirmed;
- Ms. T is liable for child support for H in the amount of \$376 per month, effective April 2013, and ongoing;
- Ms. T is entitled to a medical credit of \$63.64 per month, to be deducted from the calculated child support amount, effective April 2013, and ongoing;
- CSSD is authorized to make future adjustments in Ms. T's medical credit, as made necessary by changes to her premiums. Such adjustments do not require a modification action.

DATED this 20th day of November, 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 9th day of December, 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.]