

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

In the Matter of:)

O D. D)

OAH No. 14-0067-CSS

CSSD No. 001141008

DECISION AND ORDER

I. Introduction

O D. D appealed an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on November 29, 2013. The obligee child is B, 8 years of age. The custodial parent is K J. C.

The formal hearing was held on February 13, 2014 and March 19, 2014. Both parties appeared by telephone, along with Linn J. Plous, Mr. D's attorney. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. Final record closure occurred on May 2, 2014, after the parties submitted final post-hearing documents.

Based on the record as a whole and after careful consideration, CSSD's Amended Administrative Child and Medical Support Order is affirmed. Mr. D did not meet his burden of proof regarding his 2014 income. Mr. D was unemployed at the time of the hearing, but there is insufficient evidence that his unemployment is anything other than a temporary circumstance.

II. Facts

A. Procedural History

CSSD received an application for services from Ms. C on May 11, 2012.¹ CSSD issued an Administrative Child Support and Medical Support Order on July 12, 2012, which was served on Mr. D on August 5, 2013.² He requested an administrative review and the parties provided information for the review.³ On November 29, 2013, CSSD issued an Administrative Review Decision and Amended Administrative Child and Medical Support Order that set Mr. D's ongoing child support at \$1,169 per month, with arrears of \$12,859 for the period from May 2012 through December 2013.⁴ Mr. D filed an appeal on January 8, 2014, asserting, essentially,

¹ Exh. 11.

² Exh. 12.

³ Exhs. 13-15.

⁴ Exhs. 16-17.

that his gross income for 2014 would be lower than 2013 and that his combined support obligation for the two cases he has before CSSD should be lower.⁵

B. Material Facts

Mr. D and Ms. C are the parents of B, who is 8 years old. Mr. D has another child named A who is younger than B, and for whom Mr. D has a separate child support case administered by CSSD.⁶

Mr. D has been employed as a Technician by No Name since at least 2011.⁷ According to the Alaska Department of Labor and Workforce Development, Mr. D earned \$95,825.53 in 2011; \$91,471.19 in 2012; and \$97,310.41 in 2013.⁸

On January 16, 2014, Mr. D's employer wrote a letter to the obligor, stating that because of variations in billable work, he was being placed on Workload Imbalance (WLI) status effective January 13, 2014. The employer anticipated that Mr. D would be working anywhere from 0-24 hours per week, and that the maximum length of the WLI status would be 90 days.⁹ At the hearing, Mr. D testified that he had not worked since receiving the WLI letter, but that he expected to be back on the job sometime around the end of April, and that he would be working 40 hours per week. In a post-hearing submission, Mr. D's attorney wrote that No Name lost its contract to provide services on the No Name, "which means that Mr. D is now permanently laid off by No Name."¹⁰ The submission also stated that Mr. D received his first unemployment check the week prior, and that he was expecting \$836 per month, but there was no documentation of Mr. D being permanently laid off, or of the specific amount of his unemployment benefits.¹¹

Mr. D stated he has applied for other jobs, but has not obtained other work yet. He has been looking for work in his area of expertise – industrial blaster and coater – which is specific to the oil and gas industry. It is not known if he has expanded his job search to include other types of jobs.

⁵ Exh. 19.

⁶ See Exh. 20.

⁷ Exh. 21.

⁸ *Id.* The Department of Labor information indicates that this employer reports earnings as No Name.

⁹ Obligor's Exh. 1.

¹⁰ Mr. D's Post-Trial Submission, received April 1, 2014, at pg. 1.

¹¹ *Id.*

III. Discussion

As the person who filed the appeal, Mr. D has the burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order support order is incorrect.¹²

A. *The support obligation in this case is effective as of May 2012, but support will not be collected until February 2013*

A parent is obligated both by statute and at common law to support his or her children.¹³ 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.¹⁴ In this case, Ms. C applied for CSSD's services on May 11, 2012.¹⁵ Therefore, that is the month during which Mr. D's obligation to support B through CSSD should begin. However, CSSD's records show that Mr. D lived in the home with B through January 2013, so CSSD zeroed out Mr. D's support obligation from May 2012 through January 2013.¹⁶ There is no dispute that Mr. D's support obligation should therefore begin as of February 2013.

B. *CSSD correctly calculated Mr. D's 2012 and 2013 child support*

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." The Alaska Department of Labor and Workforce Development reported Mr. D's 2012 income at \$91,471.19,¹⁷ which CSSD used to calculate a support amount of \$1,169 per month for 2012,¹⁸ which the agency rolled over into 2013 because the calculation for the latter year was not a 15% increase from the 2012 figure.¹⁹ Since it was based on Mr. D's actual income, the 2012 and 2013 calculation is correct.

Mr. D's appeal claims that his 2014 income would be \$57,120, but he did not explain the source of that figure, nor did he provide any evidence of that amount. Therefore, it is not informative of Mr. D's ability to pay child support and that income figure may not be used to calculate his child support obligation for 2014. Neither are Mr. D's unemployment benefits

¹² 15 AAC 05.030(h).

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ 15 AAC 125.105(a)(1)-(2).

¹⁵ Exh. 11.

¹⁶ Exh. 17 at pg. 8.

¹⁷ Exh. 21.

¹⁸ Exh. 17 at pg. 11.

¹⁹ Exh. 17 at pg. 12. *See also* Civil Rule 90.3(h)(1).

suitable for the child support calculation. Alaska law directs the tribunal to make a determination of the parent's support obligation based on "the income which will be earned when the support is to be paid."²⁰ The 2013 figure has been established, but Mr. D has not proven what his 2014 income likely will be. True, he has been receiving unemployment benefits, but those funds are by their nature temporary, and do not represent Mr. D's income.

Without more information, it is more likely than not that Mr. D's unemployment status is a temporary circumstance. He may lack the ability to pay the total child support amount every month and thus he may incur additional arrears, but there is no evidence that Mr. D is permanently unemployed or unable to work. The Alaska Supreme Court has stated that unemployment is generally considered to be a temporary circumstance that should not result in the reduction of an obligor parent's child support.²¹ Prior decisions from the Office of Administrative Hearings follow this approach,²² and there is no reason not to follow that same precedent in this case. Mr. D's child support should remain at the 2013 amount until such time as Mr. D has secured employment and is earning a consistent income figure.

Finally, Mr. D asserted that when his two child support cases are added together, that his total support obligation equals 45% of his net income. Mr. D claims that Civil Rule 90.3(a) limits him to paying only 27% of his net income for two children, not 45%.

Mr. D is misreading Civil Rule 90.3. All child support cases are calculated individually for the children of a given set of parents. An examination of the Rule shows that there are no provisions for combining a parent's multiple child support awards, except in the case of a noncustodial parent who has children with more than one other parent. In that situation, he or she may be entitled to a deduction from income for paying support for an older child, or for supporting an older child in the home, under either Civil Rule 90.3(a)(1)(C) or Civil Rule 90.3(a)(1)(D), respectively. Mr. D does have a child support case for a younger child, and under Civil Rule 90.3(a)(1)(C), he may qualify for a deduction from income *in that case* for the child support he pays in *this* case, but that is the extent to which the Rule allows an obligor parent's cases to be considered together.

²⁰ Civil Rule 90.3, Commentary III.E.

²¹ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

²² *See In The Matter Of M.J.V.*, OAH No. 09-0181-CSS (Comm'r of Revenue June 2009).

IV. Conclusion

Mr. D did not meet his burden of proving by a preponderance of the evidence that the Amended Administrative Child and Medical Support Order dated November 29, 2013 is incorrect. Mr. D’s 2013 child support was calculated from his actual income, so the amount is correct. Mr. D is unemployed, but this appears to be a temporary circumstance, so his child support should not be reduced because his annual income cannot be determined at this time. CSSD’s order should be affirmed.

V. Child Support Order

- The Amended Administrative Child and Medical Support Order dated November 29, 2013 is AFFIRMED.

DATED this 22nd day of May, 2014.

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 June, 2014.

By: Signed

 Signature
Christopher Kennedy

 Name
Administrative Law Judge

 Title

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