

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

In the Matter of:)	
)	OAH No. 14-0378-CSS
G A. C SR.)	CSSD No. 001193829
_____)	

DECISION AND ORDER

I. Introduction

Based on a request from another state, the Child Support Services Division (CSSD) established a child support obligation amount for G A. C. The obligee children are G Q. C and B P. C. The custodian of record is E R. Q.

Mr. C appealed. A hearing was held on April 1, 2014. Mr. C appeared by telephone and represented himself. CSSD was represented by Child Support Specialist James Pendergraft. Ms. Q could not be contacted for the hearing, which proceeded without her.

Based on Mr. C's actual and projected income, his child support obligation is established at \$143 per month for two children in 2013 and \$407 per month for two children thereafter.

II. Facts

A. Background

Ms. Q applied for child support services through the State of Montana on August 9, 2013.¹ Montana submitted that request to CSSD,² and in turn CSSD issued a request to Mr. C to provide financial information.³ CSSD then used the information it obtained to issue an Administrative Child Support and Medical Support Order.⁴ This order set Mr. C's support obligation at \$516 per month for two children.⁵

Using a form provided by CSSD, Mr. C requested an Administrative Review Hearing.⁶ By statute, all CSSD hearings must be conducted by an Office of Administrative Hearings'

¹ Exhibit 1, page 6.

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 4.

⁵ Exhibit 4, page 1. The order is partially contradictory as one finding of fact in the order is that the support amount is based on actual income information and while another factual finding is that CSSD did not have actual income information. Exhibit 4, page 4.

⁶ Exhibit 5.

administrative law judge.⁷ However, this Administrative Review Hearing was instead conducted by a Child Support Specialist within CSSD.⁸ As a result of that hearing, an Amended Administrative Child and medical Support Order was issued, setting Mr. C's support obligation at \$451 per month for two children.⁹ This amended order determined that Mr. C was voluntarily unemployed or underemployed.¹⁰ Mr. C appealed the amended order.¹¹

B. Material Facts

Mr. C moved back to Alaska in 2012.¹² In 2013 he was working in No Name where he held two or three different short term jobs until obtaining employment with Safeway. CSSD submitted information it obtained from its database, which shows that Mr. C also worked for No Name, Inc. during the first and second quarters of 2013.¹³ Mr. C testified that he had not worked for a company of that name. CSSD stated that No Name is an Indiana company, and Mr. C testified that he had not been in Indiana for many years. The record does not show how information for CSSD's database is obtained, but it is possible that a data entry mistake was made. There is no other information in the record to show that No Name has any employees in Alaska – either under its name or under a subsidiary business name. In the absence of other evidence that Mr. C was employed by No Name, his testimony is sufficient to meet his burden of proving that the income attributed to him from that employer in Exhibit 8 is incorrect. Accordingly, Mr. C's income from employers in 2013 was \$5,950.07.¹⁴

Mr. C now works at No Name. He works full time, 40 hours per week, earning \$10 per hour.¹⁵ Although No Name has indicated that this is seasonal work,¹⁶ Mr. C testified that he expects to keep working there indefinitely.

Mr. C is working, and the record does not support CSSD's finding of fact that Mr. C is unemployed or underemployed. The only information concerning Mr. C's ability to earn more is an unsworn assertion that Mr. C had previously earned \$10.88 per hour at Safeway, and that he

⁷ AS 44.64.030(21).

⁸ Exhibit 6, page 1 & 2.

⁹ Exhibit 6, page 3.

¹⁰ Exhibit 6, page 6.

¹¹ Exhibit 7.

¹² Unless otherwise noted, the factual findings in this section are based on Mr. C's testimony.

¹³ Exhibit 8.

¹⁴ See Exhibit 8.

¹⁵ Testimony of Mr. C; Exhibit 3, page 4.

¹⁶ Exhibit 3, page 4.

lost his job with Safeway because of an altercation with a customer.¹⁷ Assuming the truth of those assertions, his current job at nearly the same rate of pay is reasonable and does not constitute underemployment.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁸ 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 person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁹

When establishing a child support obligation at the request of the custodial parent, the effective date of the obligation is the date on which the parent most recently applied for services.²⁰

On appeal, Mr. C questioned the amount of child support, having his obligation begin before he was aware that support had been requested, and whether he is the father of both of the children. Addressing paternity first, Mr. C is listed as the father on G Q. C's birth certificate from Minnesota. In 2006, Mr. C signed an affidavit of paternity in Alaska for B C. CSSD has no jurisdiction to disestablish paternity for either of those children. Mr. C would need to seek relief from an Alaska court for B or a Minnesota court for G Q.

Mr. C was also concerned that he owed arrears from a time prior to learning that he would have to pay child support. That concern is understandable, but state law requires this. Parents owe a duty of support from the day the child is born even if the custodial parent has not asked for support. Enforcing that obligation at a later date simply means that Mr. C may avoid paying for some of the earlier support.

The amount of the support obligation for both children is based on Mr. C's income. The first step is to calculate the amount of support for the first year of Mr. C's obligation, which is 2013.²¹ Because his actual income for 2013 is known, that is the amount used in making that calculation.²² As noted above, Mr. C's income was \$5,950.07. Inserting that amount into

¹⁷ Exhibit 6, page 1.

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

¹⁹ 15 AAC 05.030(h).

²⁰ 15 AAC 125.105(a)(2).

²¹ 15 AAC 125.105(e).

²² 15 AAC 125.050(b)(1).

CSSD's online calculator results in a child support obligation of \$143 per month for two children.²³

Mr. C's income for 2014 has increased. Even though he is currently a full time employee, there will likely be some days when Mr. C is unable to work due to illness, employer work-schedule reductions, or other issues. It is appropriate to assume he will work 50 out of 52 weeks during the year.²⁴ Thus, his estimated income for 2014 is \$20,000.²⁵ Using CSSD's online calculator, this results in a support obligation of \$407 per month for two children.²⁶ This is more than 15% greater than the 2013 amount, so it constitutes a material change of circumstances.

IV. Conclusion

CSSD cannot resolve Mr. C's questions about paternity. Based on his income, Mr. C's child support for 2013 should be set at \$106 per month for one child and \$143 per month for two children. For 2014 and ongoing, his child support obligation should be set at \$301 per month for one child and \$407 per month for two children. This child support calculation was made pursuant to the guidelines in Civil Rule 90.3.

V. Child Support Order

- Mr. C is not voluntarily unemployed or underemployed.
- Mr. C's child support obligation is set at \$143 per month for two children effective August 9, 2013 through December 31, 2013;
- Mr. C's ongoing child support obligation is set at \$407 per month for two children effective January 1, 2014.
- All other provisions of the February 7, 2014, Amended Administrative Child and Medical Support order remain in effect.

DATED this 3rd day of April, 2014.

Signed

Jeffrey A. Friedman
Administrative Law Judge

²³ Attachment A.

²⁴ See *In re E.M. C.*, OAH No. 11-0260-CSS (Commissioner of Revenue 2011), page 2 n. 10. Available online at <http://aws.state.ak.us/officeofadminhearings/Documents/CSS/CSS110260.pdf>.

²⁵ 40 hours per week at \$10 an hour for 50 weeks. If Mr. C's income changes, he may seek a modification.

²⁶ Attachment B.

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 21st day of April, 2014.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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