

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

In the Matter of:)	
)	OAH No. 14-0574-CSS
N P)	CSSD No. 001158024
_____)	

DECISION AND ORDER

I. Introduction

The obligor, N P, appealed an Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 26, 2013. The obligee child is L, age 5.¹

The hearing was held on May 6, 2014. Mr. P, Q K, the custodial parent, and James Pendergraft, Child Support Specialist, who represented CSSD, all participated telephonically.

After the hearing was held, the record was held open for both Mr. P and CSSD to provide additional financial information. CSSD submitted additional information. Mr. P did not.

Based on the evidence and after careful consideration, Mr. P is not entitled to any credit for child support paid to Ms. K, nor is he entitled to any deductions for support paid for his older children. He is liable for ongoing child support in the amount of \$346 per month beginning in January 1, 2014. He is liable for child support arrears² of \$395 per month beginning with the month of December 2008 through December 2010, \$288 per month beginning with the month of January 2011 through December 2011, and \$187 per month beginning with the month of January 2012 through December 2013.

II. Facts

A. Procedural Background

Ms. K began receiving public assistance benefits on L's behalf in December 2008.³ On August 26, 2013, CSSD established Mr. P's child support obligation for L in an Administrative Child Support and Medical Support Order that set his child support amount at \$385 per month

¹ Ex. 5.

² "Arrears" replaced the typographical error "appears" in the original proposed decision. See 2 AAC 64.350(b).

³ Ex. 1, p. 11.

effective September 1, 2013;⁴ it included child support arrearages in the total amount of \$22,933 for the period from December 2008 through August 2013.⁵ Mr. P requested an administrative review on November 20, 2013.⁶ On February 14, 2014, CSSD issued an Administrative Review Decision that upheld the Administrative Child Support and Medical Support Order in its entirety.⁷

Mr. P appealed on March 24, 2014.⁸

*B. Material Facts*⁹

Mr. P is the father of L. Ms. K is L's custodial parent. L was born in December 2008. Mr. P and Ms. K do not reside together and have never resided together, although Mr. P has spent large amounts of time in Ms. K's residence.

Mr. P was employed from 2008 through early 2011 as a civilian employee for No Name. He lost that job in the early spring of 2011 and left Alaska shortly thereafter. He testified that he contributed financially toward L's support from December 2008 through the early spring of 2011, when he lost his job. He stopped supporting L at that time. Mr. P testified that his support for L consisted of making Ms. K's car payments, which were between \$200 to \$300 per month, paying her insurance, and making direct payments to Ms. K of between \$300 to \$500 biweekly. Ms. K had some legal troubles in 2009 and he paid her legal fees and bail.

Mr. P has four children from other relationships, all of whom are older than L. He testified that those children did not reside with him, with the exception that his two oldest children stayed with him on visits to Alaska. He helped support his older children financially and continues to support the two youngest, who live in the Dominican Republic. However, the support for his four older children was not paid pursuant to a court or administrative support order. His two oldest children currently reside with him: they are adults, being born in 1992 and 1993, and he helps to support them while they attend college.

Mr. P testified he was making "\$12 something" per hour in 2008 and that his pay had increased to \$13.75 per hour when he was let go from his job in 2011. Alaska Department of

⁴ Ex. 1.

⁵ In arriving at this amount of arrearages, CSSD established Mr. P's child support obligation at \$461 per month for the months of December 2008 through December 2009, and at \$385 per month for the months of January 2010 through August 2013. *See* Ex. 1, pp. 11 – 12.

⁶ Ex. 2.

⁷ Ex. 4.

⁸ Ex. 5.

⁹ Except where otherwise provided, the facts are based upon Mr. P's and Ms. K's testimony.

Labor and Workforce Development record information is limited; it contains no information regarding Mr. P's income for calendar year 2008 or for the first three quarters of 2009. The Department of Labor records show that he made \$7,052.86 during the fourth quarter of 2009, and that he made \$26,250.57 during 2010.¹⁰ Mr. P's 2011 federal income tax return shows a total of \$19,408 in gross income, which is comprised of \$2,868 in wages, \$9,542 in self-employment income, and \$6,998 in unemployment compensation.¹¹ His 2012 federal income tax return shows a total of \$14,455 in gross income, all of which is self-employment income.¹² His 2013 federal income tax return shows a total of \$14,048 in gross income, which is comprised of \$5,128 in wages and \$8,920 in self-employment income.¹³ He has been employed full time at a job he began in 2013, where he currently earns \$12.25 per hour.¹⁴ His gross yearly income for 2014 would therefore be \$25,480.¹⁵ The record was held open for Mr. P to provide federal income tax information regarding his income for 2010 and preceding years. He did not avail himself of that opportunity.

Ms. K testified that Mr. P has never provided her with financial support for L. She acknowledged only that he paid her bail when she had legal difficulties in 2009. She denied receiving any other funds from him or any in-kind payments such as car payments, or that Mr. P ever provided clothing or other support for L.

CSSD submitted new calculations after the hearing for 2011 through 2014 that took into account his self-employment taxes and his paying state income tax. Those calculations were that Mr. P's child support payments for one child, assuming no support paid for his preexisting children, would be \$288 per month in 2011, \$187 per month in 2012, \$188 per month in 2013, and \$346 per month beginning in January 2014.¹⁶

¹⁰ Ex. 7, p. 1; Ex. 8.

¹¹ Ex. 3, pp. 1 – 3. These amounts are consistent with the Department of Labor and Workforce Development records for 2011. *See* Ex. 7, pp 1- 3.

¹² Ex. 3, pp. 4 – 8.

¹³ Ex. 3, pp. 9 – 17.

¹⁴ P testimony. Mr. P's pay stubs for his current job show that he was paid \$11.75 per hour at the very end of 2013. *See* Ex. 3, pp. 18 – 19.

¹⁵ Ex. 14.

¹⁶ Exs. 13 – 16.

III. Discussion

There are three factual issues in this case. The first is whether CSSD correctly calculated Mr. P's income for the purposes of determining his child support obligation. The second is whether Mr. P is entitled to deductions from that income for support provided for his four older children. The third is whether Mr. P should be provided any credit for support payments made to or for the benefit of L. After resolution of those three issues, the remaining issue is determining the amount of Mr. P owes for support, including arrearages back to December 2008.

A. Income

Neither party has provided any documentation regarding Mr. P's income in 2008. There is scant documentation for 2009, showing only fourth quarter income of \$7,052.86. These were the only income figures available through the Alaska Department of Labor and Workforce Development for 2008 and 2009. The only other evidence in the record regarding Mr. P's income for 2008 is that he was making "\$12 something" per hour. If Mr. P worked 40 hours per week, 52 weeks per year, at \$12.00 per hour, and had no overtime, this would result in gross wages of \$24,960. If his hourly rate was \$13.00 per hour, those gross wages would be \$27,040. CSSD, without providing any support, came up with gross wages of \$30,139.20 for 2008, which is substantially higher than either amount. The Division also found, in addition to the PFD, which was \$2,069 that year, other income of \$1,200 without any explanation for that \$1,200.¹⁷ In contrast, Mr. P's documented wages for the entire year of 2010 were only \$26,250.57. Due to the extremely limited information (no information for 2008 other than Mr. P's "\$12 something" per hour testimony and only income for the fourth quarter of 2009), Mr. P's gross wages for 2008 should be set at the 2010 amount, being \$26,250.57; that amount will be used for 2008 through 2010. Mr. P's gross income for child support purposes for 2008 would therefore consist of \$26,250.57 in wages and his PFD, which was \$2,069 that year,¹⁸ for a total of \$28,319.57. Because there is no evidence indicating a more than 15 percent change in Mr. P's gross income, that same figure will be used for 2009 and 2010.¹⁹

¹⁷ Ex. 1, p. 9.

¹⁸ Ex. 1, p. 9.

¹⁹ In order to modify child support, a party normally has to show a material change in circumstances – a 15 percent change in income will support that material change. See Civil Rule 90.3(h)(1). Under this rule, this would require a variation of 15 percent in Mr. P's income, which would require a difference of \$4,247.94 based upon total gross income of \$28,319.57.

Mr. P, however, had a material change in his economic circumstances in 2011. His federal tax return shows that his gross income was \$19,408, which is well over a 15 percent difference from the \$28,319.57 figure found for 2008 through 2010. His gross income for 2012 was \$14,455, which is more than a 15 percent change from the 2011 gross income amount. His 2013 income, however, was \$14,048, which is only a slight difference from his 2012 income. His 2013 income will therefore be attributed at the same amount as 2012, *i.e.* \$14,455. His 2014 income increased by more than 15 percent due to the new job he started in late 2013. That income is \$25,480.

B. Deduction for Support Provided for the Older Children

Under the Alaska Court Rule governing child support, which also applies to these administrative child support proceedings, a non-custodial parent is entitled to a deduction from his income for child support paid, pursuant to a court or administrative order, for children from a prior relationship.²⁰ A non-custodial parent is also entitled to a deduction if he has children from a prior relationship who reside with him.²¹ However, Mr. P's testimony was that he paid and pays support for his older children. But that support is not required by a court or administrative order. And his two oldest children, who currently live with him, are both adults. The youngest of these reached the age of 18 in 2011.²² The only evidence on this point is that they visited Mr. P in Alaska, but not that they lived with him when either was under the age of 18. Mr. P would therefore not be entitled to a deduction from his income for paying support for his older children, or for the fact that his two oldest children currently reside with him.

C. Credit for Support Paid to Ms. K

Mr. P testified that he provided support to Ms. K for L through the early spring of 2011. Ms. K testified she received no support. Mr. P's testimony was that he paid \$300 to \$500 biweekly, that he paid her car payments which were \$200 to \$300, and that he paid her insurance. He also testified he was financially supporting his older children. Mr. P did not present any evidence documenting these payments. Mr. P was only getting paid a gross amount of \$26,250.57 in 2010. Given that amount of income, he would have been unable to pay that amount of support to Ms. K, support himself, and support his other children. The overall weight

²⁰ Civil Rule 90.3(a)(1)(C).

²¹ Civil Rule 90.3(a)(1)(D).

²² The oldest was born in 1992 and would have turned 18 in 2010, which was when Mr. P was living in Alaska. The next oldest was born in 1993 and would have turned 18 in 2011.

of the evidence is that Mr. P was simply not credible on this point, and that Ms. K was credible. Accordingly, it is more likely true than not true that Mr. P did not provide Ms. K with any support and is not entitled to any credits against his support obligation. It is noted that Ms. K did acknowledge that Mr. P paid her bail. However, bail is normally returned to the posting party. In addition, there was no evidence presented regarding that amount. Mr. P therefore does not receive a support credit for that one time payment.

IV. Conclusion

Mr. P proved by a preponderance of the evidence that CSSD's Administrative Child Support and Medical Support Order was incorrect. Mr. P's income was steady from the birth of L in December 2008 until early 2011 when he lost his job and moved outside Alaska. His income varied thereafter. As calculated for child support purposes, it was \$28,319.57 from December 2008 through December 2010; \$19,408 from January 2011 through December 2011; \$14,555 from January 2012 through December 2013; and \$25,480 from January 2014 onward. These income figures result in child support of \$395²³ per month from December 2008 through December 2010; \$288²⁴ from January 2011 through December 2011; \$187 from January 2012²⁵ through December 2013; and \$346²⁶ from January 2014 onward. These child support calculations do not provide Mr. P with any credit for support paid for the benefit of his older children, because he failed to establish that they either lived with him during their minority or that he paid child support for their benefit pursuant to a court or administrative order. Mr. P also failed to establish that he made any child support payments for L's benefit. He is therefore entitled to no child support payment credits. The support amount was calculated pursuant to Civil Rule 90.3 without variation under Civil Rule 90.3(c).

²³ The calculations for 2008 through the end of 2010 are attached as "Attachment A." They are based upon earned income of \$26,250.57 for one child, with no deductions for child support paid for other children.

²⁴ CSSD's revised calculations for 2011 based upon total income of \$19,408 are accepted as correct since they provide Mr. P with credits for his self-employment tax and state income tax. *See* Ex. 13.

²⁵ CSSD's revised calculations for 2012 based upon total income of \$14,455 are accepted as correct since they provide Mr. P with credits for his self-employment tax and state income tax. *See* Ex. 14 Because Mr. P's income for 2013 differed by less than 15 percent from that of 2012, the 2012 income figure is also used for 2012. *See* Civil Rule 90.3(h)(1).

²⁶ CSSD's calculations for 2014 based upon total income of \$25,480 are accepted as correct. *See* Ex. 16.

V. Child Support Order

1. Mr. P's ongoing child support for L is set at the monthly amount of \$346 effective January 1, 2014.
2. Mr. P is liable for child support arrears for L in the monthly amount of \$395 from December 2008 through December 2010.
3. Mr. P is liable for child support arrears for L in the monthly amount of \$288 from January 2011 through December 2011.
4. Mr. P is liable for child support arrearages for L in the monthly amount of \$187 from January 2012 through December 2013.
5. All other provisions of the Administrative Child Support and Medical Support Order dated August 26, 2013, remain in full force and effect.

DATED this 22nd day of July, 2014.

Signed _____
Lawrence A. Pederson
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 8th day of August, 2014.

By: *Signed* _____
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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