

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

In the Matter of:	)	
	)	OAH No. 14-0928-CSS
B T	)	CSSD No. 001180144
_____	)	

**DECISION AND ORDER AFTER REMAND**

**I. Introduction**

The obligor, B T, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on April 12, 2014.<sup>1</sup> There are two obligee children.<sup>2</sup>

The hearing was held on July 1, July 17, and August 15, 2014. K D, the custodial parent, participated and was represented by G S. B T, the non-custodial parent, also participated; she represented herself. Russell Crisp represented CSSD during the July 1 proceeding; Robert Lewis represented CSSD during the July 17 and August 15 proceedings.

A proposed decision and order was issued finding that Ms. T's monthly child support obligation should be set at \$294 for her two children, effective April 1, 2014. That proposed decision and order was based on a finding that the financial aid that Ms. T received directly for her college education should be counted as income for child support calculation purposes. None of the parties filed proposals for action requesting that the final decision maker, the Commissioner of Revenue, revise the decision and order or remand it for further proceedings. The administrative law judge (ALJ), instead of adopting the proposed decision and order, referred the proposed decision and order to the Commissioner for guidance on the policy issue of whether student loans were countable income for child support purposes. The Commissioner did not adopt the administrative law judge's (ALJ) proposed decision and order; in accordance with AS 44.64.060(3), she returned this case to the ALJ to:

take additional evidence about the obligor's financial assistance; it appears from the evidence that financial aid is double counted. From my reading Ms. T receives less than what is being used in calculation. Ms. T does have countable income. The amount needs to be corrected and clarified.

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<sup>1</sup> Ex. 6.  
<sup>2</sup> Ex. 5, p. 3.

Supplemental hearings were held on October 27 and October 30, 2014. Ms. T again represented herself. Ms. S represented Mr. D. Mr. Lewis represented CSSD. New evidence was obtained during these hearings regarding Ms. T's current employment status. After the October 30, 2014 hearing, the ALJ was able to confer with the Commissioner regarding this case and obtained additional guidance on the underlying policy issue.<sup>3</sup> Specifically, the Commissioner made the policy decision that non-taxable student financial aid should not be counted as income for child support purposes.

## **II. Facts**

### *A. Procedural Background*

Ms. T and Mr. D have two children together. Mr. D currently has custody of both children. On December 21, 2011, CSSD established Ms. T's child support obligation for both children at \$377 per month effective January 1, 2012.<sup>4</sup> Ms. T requested a review of the child support order in March 2014. On April 12, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that kept her monthly child support at the same amount, \$377 per month for the two children, but which provided her with a support credit for visitation.<sup>5</sup>

Ms. T appealed and requested a formal hearing.

### *B. Material Facts<sup>6</sup>*

Ms. T is currently 27 years old. She and Mr. D have two young children. He has custody. Ms. T has had fluctuating income. In 2011, she earned \$16,905. In 2012, she earned \$6,391.35 and received \$4,536 in unemployment benefits. In 2013, she earned \$4,281.38 and received \$576 in unemployment benefits.<sup>7</sup> She stopped working in August 2013 and began attending college full time, beginning with the fall 2013 semester. She was a full time student during the 2014 spring semester, took summer classes during the summer of 2014, and was enrolled as a full time student for the 2014 fall semester.<sup>8</sup> She dropped out of college in early

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<sup>3</sup> The Commissioner is the final decision-maker on this case. Because the decision is ultimately the Commissioner's, consulting with her is appropriate. *See, e.g., In re T. C.* OAH Case No. 13-0204-MDS (Commissioner of Health and Social Services, October 2, 2013). That decision is available online at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>.

<sup>4</sup> Ex. 2.

<sup>5</sup> Ex. 5.

<sup>6</sup> Except where otherwise provided, the facts are based upon Mr. D's and Ms. T's testimony.

<sup>7</sup> Ex. 9.

<sup>8</sup> Ex. B.

October 2014.<sup>9</sup> As of the October 30, 2014 hearing, Ms. T was unemployed. She is involved in the therapeutic court program<sup>10</sup> and has been referred to the Division of Vocational Rehabilitation by that program. Because of the demands resulting from her involvement in the therapeutic court program, she estimated that she could work 30 hours per week. And based upon her previous employment history, which consisted of lower level service jobs such as pizza delivery, she estimated that she could earn \$8.50 an hour.

Ms. T's original support order, issued on December 21, 2011, provided for a monthly payment of \$377 for the two children. It was based upon wages of \$17,680 and a PFD of \$1,174.<sup>11</sup> The April 12, 2014 support order uses the same figures to arrive at the same result.<sup>12</sup>

Ms. T had very little employment income in 2014. She worked very briefly doing commission sales for a business known as No Name. She estimated that she earned approximately \$80. She testified that she tried looking unsuccessfully for other employment.

Ms. T has paid for her college through a combination of federal loans and grants. She testified that she received approximately \$3,000 to live on from those funds during the fall semester of 2013, and \$4,000 to live on during the spring semester of 2014. However, the student financial aid printouts provided by Ms. T show that she received direct deposits of \$4,732.15 and \$6,808 for the fall 2013 and spring 2014 semesters respectively.<sup>13</sup>

Ms. T was approved for \$10,015 in financial aid for the fall 2014 semester. This is comprised of federal grants, work study funding, and federal loans.<sup>14</sup> Her charges for fall semester 2014 are \$3,086.00.<sup>15</sup> She would have received a net of \$6,929 during the fall semester 2014 if she had continued through the semester and received work study funding. She dropped out of school during the early part of the 2014 fall semester and did not elect to pursue work study.<sup>16</sup>

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<sup>9</sup> Ms. T's October 27 and 30, 2014 testimony.

<sup>10</sup> Ms. T's testimony. The parties consented to the ALJ reviewing Ms. T's case history on the Alaska Court System website, which corroborates that Ms. T has been assigned to the therapeutic court program ("Coordinated Resources Project") since June 2014. *See* Alaska Court System case no. 3AN-14-00000CR.

<sup>11</sup> Ex. 2, p. 7.

<sup>12</sup> Ex. 5, p. 8.

<sup>13</sup> Fall semester 2013 has two direct deposits of \$3,527.15 and \$1,205. Spring semester 2014 has two direct deposits of \$1,770.50 and \$5,037.50. Ex. B, p. 2.

<sup>14</sup> Ex. A.

<sup>15</sup> Ex. B, p. 1.

<sup>16</sup> Ms. T's testimony.

Ms. T has been either staying with her parents or couch-surfing. She does not have a regular home of her own. She obtained short-term housing in August 2014 through a social assistance program. She does not receive cash payments through that social assistance program.

### III. Discussion

A parent is obligated both by statute and at common law to support his or her children.<sup>17</sup> 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 proving that the decision is incorrect.<sup>18</sup>

There are four issues<sup>19</sup> presented in this case: whether Ms. T was voluntarily and unreasonably unemployed through October 2014; whether the housing Ms. T has received, either through her parents or other persons, including the social assistance program, should be counted as in-kind income; whether any part of the financial aid that Ms. T receives for her education should be counted as income; and what the amount of her child support should be for the period from November 1, 2014 onward.

#### A. *Voluntary and Unreasonable Unemployment – Pre-November 2014*

CSSD may impute income for a person if it is determined that he or she is voluntarily and unreasonably unemployed or underemployed.<sup>20</sup> That is what apparently happened in this case. CSSD did not use Ms. T's current income in calculating her child support. It instead used her 2011 income, an amount which was substantially higher than what she earned in either 2012 or 2013. However, there is no evidence that Ms. T's low income through October 2014 was the result of voluntary and **unreasonable** unemployment or underemployment. Ms. T's low income was the direct result of her attending college full time. While her attending college was certainly voluntary, it cannot be said to be unreasonable. She is only 27 years old, and furthering her education should have the effect of increasing her earning capacity, which will have the long term effect of benefiting the children. As noted in the commentary to Civil Rule 90.3, "[w]hen a

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<sup>17</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>18</sup> 15 AAC 05.030(h).

<sup>19</sup> This case originally presented only three issues. However, the fact that Ms. T left college early in the fall 2014 semester presented a change of circumstances requiring the resolution of her post-college support obligation.

<sup>20</sup> Civil Rule 90.3(a)(4).

parent makes a career change, this consideration should include the extent to which the children will ultimately benefit from the change.”<sup>21</sup>

CSSD therefore should not have imputed Ms. T’s income for child support purposes based upon her 2011 income.

*B. Income Sources – Housing*

Ms. T has been essentially homeless. She has been residing with family and friends, and was, as of the August 15 hearing, residing in rent-free housing through a social program. Mr. D argued that her free housing should be valued and counted as income. Civil Rule 90.3 counts housing as income if it is provided by an employer as a perquisite of employment or in-kind compensation.<sup>22</sup> Ms. T’s free housing is not provided by an employer as a perquisite of employment, nor is it in-kind compensation. Thus, it has no countable value for child support purposes.

*C. Income April 2014 – October 2014 (College Financial Aid)*

Ms. T received funds from federal student loans and grants beginning in the fall of 2013. The student financial aid printouts show that she received \$4,732.15 and \$6,808 for the fall 2013 and spring 2014 semesters respectively, and would have received \$6,929 for the fall 2014 semester if she had completed the semester and received work study income. According to Civil Rule 90.3, the only student financial aid explicitly excluded from income for child support purposes is GI education allotments. The rule does not address whether other student financial aid should be included in an obligor’s countable income.<sup>23</sup>

There is one prior Alaska administrative case which deals with this issue. It holds that, while student loan income used to pay school expenses should not be counted as income, that portion of the loan received by the student for use as living expenses is countable as income.<sup>24</sup> However, that decision appears to be an anomaly. As a general rule, loans are not counted as income for child support purposes for several reasons. First, they have to be repaid and no deduction from countable income is given for child support calculation purposes when those loans are repaid. Second, loans are not considered as income for tax purposes and are not shown as income on tax returns. Generally, only taxable income is counted as income for child support,

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<sup>21</sup> *Commentary to Civil Rule 90.3 § III(C).*

<sup>22</sup> *Commentary to Civil Rule 90.3 § III (A)(19).*

<sup>23</sup> *Commentary to Civil Rule 90.3 § III(A)(26).*

<sup>24</sup> *In re R. K.*, OAH Case No. 07-0428-CSS (Commissioner of Revenue 2007).

although there are some exceptions to that rule, such as income from military cost of living adjustments or Social Security Children's Insurance Benefits.<sup>25</sup> Tax returns are generally relied upon for purposes of determining countable child support income. Federal student financial aid, including federal educational grants, is not taxable income.<sup>26</sup>

Consistent with the general rule that loans are not counted as income for child support purposes, and consistent with the fact that federal student loans and educational grants are not counted as taxable income, this decision reconsiders the prior Alaska administrative case and holds that income from those sources is not counted for child support calculation purposes. Given Ms. T did not receive any work study income in 2014, her countable income from her education is \$-0-.

This results in her total income, for child support purposes through the end of October 2014 being her PFD of \$1,884 and her No Name income of \$80. This comes to a total of \$1,964, which results in her monthly child support obligation being \$50 per month for both children while she was in college.<sup>27</sup>

#### *D. Income – Post College*

Ms. T had a substantial change in her circumstances when she dropped out of college in early October 2014. Because she is no longer going to school full time, it is entirely reasonable to expect that she is employable. Although she is involved in the therapeutic court program and has been referred to the Division of Vocational Rehabilitation, there is no evidence suggesting that she is disabled or unemployable. The only evidence regarding her income capacity consisted of her testimony that she could work 30 hours per week at an hourly wage of \$8.50. Her testimony regarding her prior work history suggested that this rate of pay is not inappropriate, and if she was able to work 40 hours per week, it would be close to her 2011 gross income figure of \$16,905.<sup>28</sup> However, because of her involvement with the therapeutic court program, her testimony that she is capable of working only 30 hours a week is reasonable. Assuming that she has 50 weeks of paid work per year, and two weeks of unpaid leave, this would provide her with gross employment income of \$12,750 per year.

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<sup>25</sup> *Commentary to Civil Rule 90.3 § III(A).*

<sup>26</sup> Ex. 11.

<sup>27</sup> *See Attachment A.*

<sup>28</sup> If Ms. T worked 50 weeks per year, which assumes two weeks of unpaid leave, for 40 hours per week at \$8.50 per hour, she would gross \$17,000.

Using the employment income amount of \$12,750 and projecting that she will continue to receive her PFD, her projected yearly income for the period November 1, 2014 forward is \$14,634. This results in her child support obligation being \$219 for one child and \$295 for both children.<sup>29</sup>

#### **IV. Conclusion**

Ms. T proved by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. Given the fact that Ms. T dropped out of college and did not receive any work study funding in 2014, her only countable income in 2014, up through October 2014, has consisted of her PFD (\$1,884), approximately \$80 from very brief employment with No Name, and her educational loans and grants. Of those, only her PFD and her employment compensation are countable for child support calculation purposes. This results in a total monthly child support obligation of \$50 for both children.

Given Ms. T's very substantial change in circumstances that occurred in October of 2014, which consisted of her leaving college, it is appropriate to redetermine her child support obligation effective November 1, 2014. Estimating Ms. T's income, based upon her testimony, results in a total monthly child support obligation of \$295 for both children.

These amounts are calculated pursuant to Civil Rule 90.3 without variation under Civil Rule 90.3(c).

#### **V. Child Support Order**

1. Ms. T's child support obligation is \$50 per month for her two children from April 1, 2014 through October 2014.
2. Ms. T's child support obligation is \$295 per month for her two children (\$219 for one child) effective November 1, 2014.
3. All other provisions of the April 12, 2014 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 14<sup>th</sup> day of November, 2014.

*Signed*

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Lawrence A. Pederson  
Administrative Law Judge

<sup>29</sup> See Attachment B.

## **Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, 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 21<sup>st</sup> day of November, 2014.

By: Signed  
\_\_\_\_\_  
Angela Rodell  
Commissioner  
Department of Revenue

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