

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

In the Matter of:)	
)	OAH No. 14-1128-CSS
N K)	CSSD No. 001037386
_____)	

DECISION AND ORDER

I. Introduction

The obligor, N K, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on January 30, 2014.¹ The obligee child is C, age 15.²

The hearing was held on July 23, 2014. U T, the custodial parent, and Robert Lewis, Child Support Specialist, who represented CSSD, participated telephonically. N K was not available for the hearing.³

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

Based on the evidence and after careful consideration, Ms. K's child support obligation remains at \$50 per month, the amount which was set back in May 2002.

II. Facts

A. Procedural Background

Mr. T and Ms. K have four children together. Mr. T has had custody of all the children, three of whom have reached their majority. He remains the custodial parent for C, the last minor child. On June 6, 2000, CSSD established Ms. K's child support obligation for all four children in an Administrative Child Support and Medical Support Order that set her child support amount at \$621 per month effective July 1, 2000; it included child support arrearages in the total amount of \$3,105 for the period from February 2000 through June 2000.⁴ Following an administrative review on October 30, 2000, CSSD issued an Amended Administrative Child and Medical

¹ Exs. 4, 5.

² Ex. 4.

³ Ms. K was provided an opportunity to show cause for not attending her hearing, and to ask to have the hearing rescheduled. She did not respond.

⁴ Ex. 1.

Support Order that increased Ms. K's monthly child support amount to \$949 beginning with November 2000.⁵ On May 17, 2002, CSSD issued a Modified Administrative Child Support and Medical Support Order that decreased Ms. K's monthly child support amount to \$50 beginning in November 2001.⁶

Mr. T requested modification of the existing child support order on September 18, 2013.⁷ CSSD notified the parties of the request on September 24, 2013.⁸ It then issued a Modified Administrative Child Support and Medical Support Order on January 30, 2014. That order increased Ms. K's monthly child support obligation to \$253 beginning October 2013.⁹

Ms. K appealed and requested a formal hearing.¹⁰

*B. Material Facts*¹¹

Ms. K and Mr. T have four children. They separated and Mr. T moved out of the State of Alaska, taking the children with him. Ms. K subsequently filed for divorce in Alaska in 2001. Mr. T has had continuous physical custody of all four children since the parties' separation. C, who continues to reside with Mr. T, is the only child who has yet to reach the age of 18. Mr. T has received a limited amount of child support payments since the divorce, which have primarily come from garnishments of Ms. K's Native corporate dividends and PFDs.

CSSD raised Ms. K's child support obligation from \$50 per month to \$253 per month effective October 2013. That increase was based upon CSSD assuming that she could work a full time minimum wage job (\$7.75 per hour), receipt of a PFD, and an average of \$244.66 in annual Native corporate dividends.¹²

Mr. T testified Ms. K was always able to obtain seasonal employment during their time together, and that she obtained a job briefly after their divorce, which she quit because her pay was garnished for child support. He said he still had friends in the No Name area, and they told him that Ms. K was not disabled. He testified, in response to a CSSD statement that Ms. K was currently receiving Food Stamp benefits, that there was no need for her to receive those benefits

⁵ Ex. 8.

⁶ Ex. 9.

⁷ Ex. 2.

⁸ Ex. 3.

⁹ Ex. 4.

¹⁰ CSSD received Ms. K's appeal request on March 3, 2014. See Ex. 5. CSSD did not refer the case for hearing until July 3, 2014.

¹¹ Except where otherwise provided, the facts are based upon Mr. T's testimony.

¹² Ex. 4, p. 6.

because her current husband makes a good living. Mr. T further testified that CSSD was undercounting the amount of Native corporate dividends that Ms. K received, based upon his knowledge of what dividends his children received. He testified that he had documentation showing the amounts of the Native corporate dividends. He was provided the opportunity to submit that documentation, but he did not.

Alaska Department of Labor and Workforce Development records show that Ms. K had \$5,970.99 in reported wages in 1998, \$5,141.48 in reported wages in 1999, no reported income for 2000 through 2010, \$933.63 in reported wages in 2011, and no wages reported since 2011.¹³

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁴ 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.¹⁵

The issue in this case is whether CSSD was correct to increase Ms. K's monthly child support payment from \$50 to \$253. Because Ms. K requested the hearing, she has the burden of proof.

The evidence regarding Ms. K's income and her earning capacity consists of the Department of Labor records and Mr. T's testimony. Mr. T's testimony regarding Ms. K's ability to obtain a job, whether her husband makes a good income, and whether she was disabled, is not based upon his personal knowledge and is speculative. His testimony is therefore given little weight. The only objective evidence of Ms. K's income consists of the Department of Labor records, which show that the only times she has worked since 1999 was in 2011, when she earned only \$933.63. There is no evidence that establishes that she is either working or avoiding work.

Given the evidence showing Ms. K's extremely limited work income since 1999 and the lack of any evidence showing her earning capacity, it is more likely true than not true that the division should not have imputed income to her at minimum wage when it redetermined her child support obligation at \$253. Based on the evidence as a whole, Ms. K has met her burden of

¹³ Ex. 10.

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ 15 AAC 05.030(h).

proof. She has virtually no income to speak of other than her PFD and her Native corporate dividend. Her child support obligation should remain at \$50 per month, as it was set by CSSD in its May 17, 2002 Modified Administrative Child and Medical Support Order.¹⁶

IV. Conclusion

Ms. K proved by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. She has virtually no income other than her PFD and a limited Native corporate dividend. Her monthly support amount should be \$50, which is calculated pursuant to Civil Rule 90.3 without variation under Civil Rule 90.3(c).

V. Child Support Order

1. Ms. K's child support remains at \$50 per month;
2. All other provisions of the January 30, 2014 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 21st day of August, 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 September, 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.]

¹⁶ In order for Ms. K to be responsible for more than a monthly payment of \$50, her yearly adjusted income would need to exceed \$3,000. (\$50 per month comes to \$600 per year. \$600 is 20 percent of \$3,000). The evidence shows that her income is much less than that.