

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

In the matter of:)	
)	OAH No. 14-1495-CSS
S P. J)	CSSD Case No. 001162492
_____)	

DECISION AND ORDER

I. Introduction

The obligor, S P. J, appealed an Amended Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 12, 2014. This order increased Mr. J's monthly support obligation from \$308 to \$329 per month for one child. The custodian of record is K D. D. The obligee child is C, age 5. The obligor participated by telephone. Ms. D could not be contacted by phone or mail.¹ James Pendergraft, Child Support Specialist, represented CSSD.

Mr. J is liable for support in the amount of \$308 per month for one child effective August 1, 2014 and ongoing.

II. Facts

Ms. D requested a modification review.² Mr. J provided income information and CSSD issued the Modified Administrative Child Support and Medical Support Order on August 6, 2014.³ CSSD totaled Mr. J's recent pay receipts and annualized the amount to reach an estimated annual income amount of \$22,274.⁴ CSSD considered Mr. J's earnings to be "Wages Subject to FICA,"⁵ and set Mr. J's monthly child support at \$321 per month for one child effective August 1, 2014.⁶

A week later, CSSD reviewed its August 6, 2014 order and concluded that, because Mr. J is self-employed, his earnings should have been treated as "Other Taxable Income."⁷ CSSD recalculated his support, treating his estimated annual earnings as "Other Taxable Income," and

¹ Service is effective if mailed to the latest address provided to the department. 15 AAC 05.010(c). The file contains no indication that the notice of hearing sent by certified or first class mail was returned. Therefore, the hearing proceeded in her absence.

² Exhibit 2.

³ Exhibits 5, 6.

⁴ Exhibit 6 at 5, 6.

⁵ Exhibit 6 at 6.

⁶ Exhibit 6.

⁷ Exhibit 8 at 6.

issued an Amended Modified Administrative Child Support and Medical Support Order dated August 11, 2014. This order set Mr. J's monthly child support at \$329 for one child.⁸

Mr. J appealed. He believes CSSD understated his allowable deductions and should not have included the permanent fund dividend (PFD) as income because he does not receive a PFD.

The formal hearing took place on September 22, 2014. Mr. J was recently released from jail, so there is a large gap in his reported earnings.⁹ Mr. J agreed with the amount of income used by CSSD (\$22,274) but said that, because he was now self-employed, he would pay taxes and that at this time he is unsure of the exact amount.¹⁰ He just paid his first quarterly tax in the amount of \$2000. This amount is not based on any actual calculation, but rather what Mr. J has paid to be on the safe side.¹¹

Regarding CSSD's allowable deductions, the Amended Modified Administrative Child Support and Medical Support Order allowed a deduction for two items: \$105.10 under Federal Income Tax and \$50 for child support in a prior relationship.¹² The total allowable deductions are \$155.10. In the original Modified Administrative Child Support and Medical Support Order, total allowable deductions are \$124 Federal Income Tax, \$142 Social Security and Medicare (FICA), Unemployment Insurance (SUI), and \$50 child support for a prior child. The allowable deductions under the first calculation total \$328.50.

These deductions were calculated using CSSD's child support calculator.¹³ When wages are subject to FICA, the calculator automatically factors in monthly allowable deductions. When an obligor is self-employed, CSSD uses the same calculator, but using the obligor's tax returns, manually enters the monthly allowable deductions.

The challenge for CSSD was Mr. J's lack of information. Because Mr. J has recently returned to the job market as self-employed, there is no information regarding the monthly allowable expenses associated with self-employment. CSSD placed Mr. J's earnings under "Other Taxable Income" so the calculator would deduct some amount for income tax.¹⁴

CSSD and Mr. J agreed that the most accurate prediction of adjusted gross income for purposes of child support earned when the support is paid is the original calculation without

⁸ Exhibit 8.

⁹ Exhibit 10.

¹⁰ Testimony of J.

¹¹ *Id.*

¹² Exhibit 8.

¹³ The calculator is available online at <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

¹⁴ Exhibit 8; Representations of Pendergraft.

including the PFD. This results in a monthly child support obligation for one child in the amount of \$308.¹⁵

III. Discussion

The amount of child support received by a child is based on the parent's ability to pay.¹⁶ The child support calculation and procedures are intended to capture the income earned when the support is paid. However, because the relevant income is expected future income, the amount of income used in the calculation is necessarily speculative.¹⁷ Child support determinations calculated under Civil Rule 90.3(a) from a parent's actual income are presumed to be correct.

As the obligor, Mr. J has the burden of proving his earning capacity.¹⁸ Also, because he filed the appeal, Mr. J has the burden of proving that CSSD's order is incorrect.¹⁹ This means he must prove by a preponderance of the evidence his income for purposes of child support, and that if CSSD used this figure, the amount of support owing would be different from the amount ordered in the Amended Modified Administrative Child Support and Medical Support Order dated August 11, 2014.²⁰

Mr. J has met his burden. The calculation includes \$900 for the PFD. It is undisputed that Mr. J is not eligible to receive a PFD in 2014. It is also undisputed that Mr. J is now self-employed. Regarding his earning capacity, Mr. J agrees that the amount attributed to him as income by CSSD in the August 6, 2014 order, \$22,274, is correct. He has not been self-employed long enough, however, to determine what his mandatory deductions, such as Federal tax, self-employment tax, etc., will be.²¹

Mr. J is entitled to mandatory deductions from his income.²² It is reasonable to conclude that they will be higher than \$155.10 per month. The question is how much higher. In this instance, the closest and most accurate estimate of future deductions are those derived from his

¹⁵ Attachment A.

¹⁶ Commentary Civil Rule 90.3 I B.

¹⁷ Commentary Civil Rule 90.3 III E.

¹⁸ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁹ 15 AAC 05.030(h).

²⁰ 2 AAC 64.290(e).

²¹ Civil Rule 90.3(a)(1). Income from self-employment includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Commentary Civil Rule 90.3 III B. These expenses do not include amounts allowable by the IRS. *Id.* Additionally, reimbursements and in-kind payments are included as income if the amount is significant and reduces the obligor's living expenses. *Id.*

²² *Id.*

actual earnings treated as subject to FICA.²³ Accordingly, his child support obligation should be calculated by placing his expected annual income in the “Wages Subject to FICA” category. CSSD and Mr. J agree that Mr. J’s ongoing child support should be calculated this way until there is a more accurate accounting of his income and deductions. Mr. J’s monthly child support for one child, effective August 1, 2014 and ongoing, should be \$308 per month as calculated using CSSD’s online calculator.

IV. Conclusion

Mr. J has established by a preponderance of the evidence that CSSD’s August 11, 2014 Amended Modified Administrative Child Support and Medical Support Order was incorrect. The amount of child support owing effective August 1, 2014 is \$308 per month for one child.

V. Order

- Mr. J’s ongoing child support obligation for C is \$308 effective August 1, 2014 and ongoing.
- All other provisions of the August 12, 2014 Amended Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 24th day of September, 2014.

By: Signed _____
Rebecca L. Pauli
Administrative Law Judge

²³ Moreover, if Mr. J’s plan for self-employment does not work out, the record supports a finding that he has had earnings that would produce this amount of annual wages subject to FICA.

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 14th day of October, 2014.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Admin. Law Judge
Title

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