

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

In the Matter of:)

L B)
_____)

OAH No. 14-1961-CSS

CSSD No. 001196550

DECISION AND ORDER

I. Introduction

This order addresses the establishment of arrears owing from December 2013 through November 2014, when the obligor L B relinquished parental rights to his son M, age 1 year. The custodial parent is C T. N. At the hearing, Mr. B's mother was his power of attorney and participated on his behalf. All parties participated by telephone. Mr. B established by a preponderance of the evidence that CSSD had overstated his income for purposes of calculating his child support obligation for December 2013, his monthly support obligation was \$828 and it is reduced to \$273 effective January 2014 and ongoing. Mr. B's periods of medical disability and incarceration are not considered voluntary unemployment, so income will not be imputed for him for those periods.

II. Facts

A. Procedural History

The Child Support Services Division (CSSD) received Ms. N's Application for Child Support Services on December 20, 2013.¹ Mr. B acknowledged his paternity of M.² Ms. N and Mr. B, a journeyman electrician, provided financial information for purposes of determining child support.³ Using this information, CSSD set Mr. B's monthly child support obligation for M at \$786 per month effective December 13, 2013 and ongoing.⁴ Mr. B received the establishment order on June 16, 2014.⁵

¹ Exh. 1.
² Exhs. 3, 7.
³ Exhs. 5, 6, and 8 – 11.
⁴ Exh. 12.
⁵ Exh. 12.

Mr. B requested an administrative review when he realized that CSSD imputed income to him even though he was not medically released to work after a March 9, 2014 injury.⁶ CSSD issued an Amended Administrative Child Support and Medical Support Order dated October 2, 2014. This order increased Mr. B's monthly child support to \$828 per month effective December 2013.⁷ Mr. B again appealed, contending that the amount was too high because his income had changed due to his injury, he was unable to return to prior employment and he was incarcerated.

B. Material Facts

Mr. B and Ms. N are the parents of M, age 1, who lives full-time with his mother. Mr. B has a prior child whom he raises with the help of his mother. He relinquished all parental rights to M effective November 2014.

Mr. B was injured at work on March 9, 2014. The record does not contain any information regarding whether he applied for, or received, Workers' Compensation benefits.⁸ Mr. B presented a prescription dated June 15, 2014 stating that he was recently hospitalized, he was unable to work and could not return to work until he was reevaluated.⁹ He also presented a letter dated June 16, 2014, from Physician Assistant, C V, who wrote that due to Mr. B's "health issues," he had been unavailable for employment.¹⁰ Because he was not able to work, Mr. B did not receive Unemployment Insurance benefits.

Not only was he injured in March 2014, but Mr. B was also dealing with substance abuse and depression. The substance abuse resulted in a DUI, and the loss of his driver's license, hospitalization, and short periods of incarceration from June 2014 until he was sentenced on October 13, 2014.

Prior to his injury, Mr. B had a steady work history. Alaska Department of Labor and Workforce Development records show that in 2011 Mr. B earned \$56,095.91; in 2012 he earned \$91,931.23; in 2013 he earned \$77,159.55 and received \$2,364 from unemployment insurance;

⁶ Exh. 14.

⁷ Exh 22.

⁸ Exh. 14 at 2.

⁹ Exh. 12 at 2 (indiscernible signature).

¹⁰ Exh. 14 at 3.

and in the first quarter of 2014 Mr. B earned \$19,378.53.¹¹ He had no reported earnings in the second and fourth quarters of 2014. His reported 2014 third quarter earnings totaled \$2,680.¹²

Mr. B's third quarter 2013 earnings were reduced because he lost his driver's license, and without the ability to drive, he could not find work.¹³ His brother hired him to work for \$25 per hour. Journeymen electricians typically earn more than \$25 per hour, but his brother had to hire a person just to drive Mr. B from worksite to worksite.¹⁴

Ms. N presented evidence, in the form of her sworn testimony and many exhibits, from which she attempted to establish that Mr. B was able to work and was indeed working under the table.¹⁵ Because of Mr. B's legal difficulties, it may be that once he recovered from his work injury he was unable to return to work due to substance abuse and depression. Regardless of the reason why, Mr. B has statements from health care providers that he is not released to work.

III. Discussion

This case deals with a limited period of time, addressing only the arrears owing from December 2013 through November 2014. As the person who filed the appeal, Mr. B has the burden of proving by a preponderance of the evidence that CSSD's support order is incorrect.¹⁶

A parent is obligated both by statute and at common law to support his or her children.¹⁷ This obligation begins when the child is born.¹⁸ However, by regulation, CSSD only collects support from the date the custodial parent requested child support services, or the date public assistance or foster care services were initiated on behalf of the child(ren), up to six years prior to service on the obligor of notice of his or her support obligation.¹⁹ This obligation ends when the parent's rights are terminated by court order. Mr. B's parental rights were terminated in November 2014.

¹¹ Exh. 24.

¹² Exh. 29.

¹³ Ms. N did not challenge Mr. B's testimony that corroborated written statements from S B and L B. *See e.g.* B submission dated January 29, 2015 including attached documents; Exh. F.

¹⁴ *Id.*

¹⁵ Exh 17 at 2, 4; Exh. 15 at 2, 6; Exh. 18 p. 13; Exh. 4 at 2; Exh. 14 at 3.

¹⁶ 15 AAC 05.030(h).

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

¹⁸ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

¹⁹ 15 AAC 125.105(a)(1)-(2).

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. When calculating arrears, the regulations define income as the *actual annual income* that the parent earned or received *each calendar year* for which arrears are sought to be established.²⁰ Here, the arrears span two calendar years. The first calendar year is 2013, when Mr. B's annual income for purposes of child support was \$79,523.55.²¹ After taking into account a deduction for a prior child, and the other standard allowable deductions, Mr. B's 2013 monthly child support obligation for one child is \$807.²²

Mr. B's income for 2014 was \$22,058.²³ Based on this figure, his 2014 monthly child support obligation is for one child is \$273.²⁴

Ms. N does not challenge the income that was reported; rather, she believes the obligor earned income that is not reported. In the alternative, Ms. N asserts that Mr. B's income is understated because he was voluntarily unemployed or underemployed. In response, Mr. B contends that he was unable to work, and that when he could return to work, he could not find a job that paid the same because he had lost his driver's license.

An obligor who claims he or she cannot work or pay child support because of a disability or similar impairment must provide sufficient proof of the medical condition, such as testimony or other evidence from a physician.²⁵

Although it was a physician's assistant, not a physician, who wrote that Mr. B was not released to return to work, the assessment that Mr. B was disabled from work is sufficient to meet his burden of proof on this issue. Ms. N claimed that Mr. B could work, and was working under the table as an electrician. However, there was no evidence submitted that would enable the administrative law judge to quantify that potential income for child support purposes. Conversely, the record does contain evidence tending to establish that it is more likely than not that Mr. B's earning potential was hindered because he did not have a driver's license and he was incarcerated. Thus, Mr. B met his burden of proving that he was disabled from work, and as a

²⁰ 15 AAC 125.020; 15 AAC 125.030(d); 15 AAC 125.105.

²¹ Reported Earnings \$77,159.55 + Unemployment Insurance \$2,364 = \$79,523.55.

²² Attachment A.

²³ \$19,378.53 + \$2,680 = \$22,058.53.

²⁴ Exh. 31.

²⁵ *Kowalski v. Kowalski*, 806 P.2d 1368, 1371 (Alaska 1991).

result, his child support should be based upon his actual reported earnings and not imputed income.

Because this is an arrears only matter, the tribunal has the benefit of actual income earned in the year support was owed and support will be calculated using actual income.²⁶

IV. Conclusion

Mr. B met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect. He was disabled from work due to medical issues related to a March 2014 accident. He returned to the work force in June 2014 working sporadically at \$25 per hour. He was incarcerated in October 2014. Using his reported earnings for 2013, Mr. B's monthly support obligation for one child is \$807 effective December 2013. Using his reported earnings for 2014, Mr. B's monthly support obligation for one child is \$273 effective January 2014.

V. Child Support Order

1. Mr. B's monthly child support order for December 2013 is \$807 per month; effective January 2014 through the termination of parental rights, his child support is \$273 per month.
2. All other provisions of CSSD's Amended Administrative Child Support and Medical Support Order dated October 2, 2014 remain in full force and effect.

DATED this 24th day of April, 2015.

Signed

Rebecca L. Pauli
Administrative Law Judge

²⁶ 15 AAC 125.020; 15 AAC 125.030(d); 15 AAC 125.105.

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 11th day of May, 2015.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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