

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

In the Matter of)	
)	
N E. D)	OAH No. 15-0812-CSS
_____)	Agency No. 001203734

DECISION AND ORDER

I. Introduction

N D appeals an Amended Administrative Child Support and Medical Support Order that increased his monthly child support obligation for his daughter B from \$195.77 to \$354.56. Because Mr. D has not met his burden of establishing that the support amount is incorrect, his appeal is denied.

II. Facts

N D and E C are the parents of ten-month-old B P, born in October 2014. Mr. D and Ms. C share custody evenly.

In November 2014, the Division of Public Assistance notified the Child Support Services Division (CSSD) that Ms. C and B were receiving public assistance benefits. This notification, in turn, triggered the initiation of child support proceedings.¹

In February 2015, Mr. D provided CSSD with requested income information, including his W-2s from 2013 and 2014.² The records provided by Mr. D established that his gross wage income for 2014 was \$32,284.38.³

On March 3, 2015, CSSD issued an Administrative Child Support and Medical Support Order establishing Mr. D’s child support obligation for B under the parties’ joint custody agreement at \$195.77 per month.⁴ This amount was calculated based on Mr. D’s actual 2014 wage income, and an imputed wage income for Ms. C.⁵

On April 13, 2015, Mr. D requested an administrative review of the March 2015 Order. On the request form, he checked the box indicating he was seeking review because the support amount “is incorrect because [his] financial circumstances are not as CSSD

¹ See Ex. 1-3.
² Ex. 6.
³ Ex. 6; Ex. 7, p. 9.
⁴ Ex. 7.
⁵ See Ex. 7, pp. 4-5; Ex. 8, pp. 8-9; Ex. 9, pp. 15-16.

determined.”⁶ CSSD conducted an administrative review and, on May 21, 2015, issued an Order amending the March 2015 Administrative Child Support Order. CSSD’s Amended Administrative Child Support and Medical Support Order increased Mr. D’s child support obligation to \$354.56 per month, effective June 1, 2015.⁷

Mr. D filed a timely appeal of the Amended Support Order.⁸ A hearing was scheduled for July 23, 2015, with both parents notified of the hearing date and time by certified mail. When he was contacted by phone at the start of the hearing, Mr. D indicated that, despite having received written notice of the hearing date and time, he was not prepared to participate because he was at work and going into a meeting. Because Ms. C did not object, the hearing was rescheduled to August 6, 2015, and another written notice was mailed to both case parties.

When the hearing reconvened on August 6, Mr. D did not answer his phone. A message was left on his voice mail, reminding him of the hearing that had been rescheduled at his request, and informing him that the hearing was beginning. The hearing then proceeded in Mr. D’s absence pursuant to 15 AAC 05.030(j). Ms. C participated telephonically. Delinda Cain, representing CSSD, appeared in person. Following the hearing, the record was held open 10 days after the hearing to allow Mr. D to show cause for his failure to appear at the hearing.⁹ The record closed without further communication from Mr. D.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ Child support obligations are determined under Alaska Civil Rule 90.3. “The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay.”¹¹

⁶ Ex. 8.

⁷ Ex. 9, p. 1.

⁸ Ex. 10.

⁹ 15 AAC 05.030(j). After the substantive portion of the hearing was over and as the hearing was ending, Mr. D finally called the OAH. His call was not transferred into the hearing because the time for the hearing had ended, but OAH staff informed him of the 10-day timeframe for showing good cause. Mr. D did not contact OAH during the subsequent ten days, or any time thereafter, either to request an additional hearing or to attempt to show good cause for his failure to appear.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹¹ Civil Rule 90.3, Commentary I.B.

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,” minus mandatory deductions such as taxes and Social Security. The support amount is reduced where, as here, the parties share custody.¹² Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated.¹³ For each parent, that support amount is then multiplied by the percentage of time the other parent will have physical custody of the child. The parent for whom this calculation yields the larger amount is the obligor parent. The annual child support award from the obligor parent to the other parent is equal to the difference between the two figures, multiplied by 1.5.¹⁴

If an obligor – or, under the shared custody formula, either parent – is voluntarily or unreasonably unemployed, CSSD may impute income to the obligor considering factors such as the obligor’s age, level of education and work history. However, Civil Rule 90.3(a)(4) prohibits CSSD from imputing income to a parent “who is caring for a child under two years of age to whom the parents owe a joint legal responsibility.”

Mr. D seeks review (1) “because there was such an increase” in the monthly payment amount, and (2) because he would like credits for funds expended on behalf of B.¹⁵ As the party who filed the appeal, Mr. D has the burden of proving that the May 2015 Amended Administrative Child Support and Medical Support Order is erroneous.¹⁶

A. Increase in Monthly Support Amount Between March and May Orders

Mr. D’s child support amount increased as a result of the administrative review. As explained in the Amended Administrative Child Support and Medical Support Order, the reason for the increase is that the March 2015 Administrative Child Support Order included a significant error that artificially lowered Mr. D’s support amount until it was corrected.¹⁷

As noted above, CSSD may usually impute a reasonable income to a parent who is not working. However, Rule 90.3(a)(4) expressly prohibits CSSD from imputing income to the custodial parent “who is caring for a child under two years of age to whom the parents

¹² Shared custody exists when a child resides with a parent at least 30, but no more than 70, percent of the overnights. Alaska Civil Rule 90.3(f).

¹³ See Ex. 7, pp. 8-9; Ex. 9, pp. 9-11.

¹⁴ Alaska Civil Rule 90.3(f); see Ex. 7, p. 10; Ex. 9, p. 11.

¹⁵ Ex. 10, p. 1.

¹⁶ 15 AAC 05.030(h).

¹⁷ Ex. 9, p. 15.

owe a joint legal responsibility.” Because B is not yet two years old, CSSD erred in imputing income to Ms. C in the March 2015 Administrative Child Support Order.

The May 2015 Amended Administrative Child Support and Medical Support Order corrected this mistake, replacing the imputed income with only Ms. C’s actual income.¹⁸ This had the effect of lowering Ms. C’s monthly support obligation to the statutory minimum of \$50 per month.¹⁹

Under a shared custody arrangement, as long as the obligor’s monthly income remains unchanged, if the custodial parent’s monthly payment decreases, then the obligor’s monthly payment will increase. Once CSSD corrected its earlier error and decreased the monthly support obligation attributed to Ms. C, Mr. D’s monthly support amount increased accordingly.

Mr. D did not meet his burden of proving that the May 2015 Amended Administrative Child Support and Medical Support Order incorrectly increased his monthly support amount. To the contrary, the evidence establishes that the May 2015 Amended Support Order corrects the error of the earlier Support Order, and appropriately establishes Mr. D’s support obligation based on the parties’ actual income.

B. Mr. D’s Request for Credit Based on Items Purchased for B

The other issue on which Mr. D appeals concerns credits for funds he gave Ms. C or items he purchased for B at Ms. C’s request. Ms. C testified that Mr. D frequently assists her by buying things she needs for her home, helping her with car payments, and buying necessities such as diapers, wipes and baby formula for B. Mr. D attached to his appeal photocopies of eight hand-written receipts, signed by Ms. C, documenting Mr. D’s purchase of items for Ms. C’s household or for B’s use at daycare.²⁰ Ms. C testified that Mr. D purchased various items at her request,²¹ and that she understood Mr. D to believe that he could receive child support credits for such payments if he provided CSSD with receipts.

¹⁸ Ex. 9, p. 10. The May 2015 Amended Administrative Child Support and Medical Support Order also slightly lowered its estimation of Mr. D’s income by removing the entry for the Alaska Permanent Fund Dividend, as Mr. D is ineligible for the PFD. *See* Ex. 9, p. 9.

¹⁹ Ex. 9, p. 10.

²⁰ Ex. 10, pp. 2-3.

²¹ Seven of the eight receipts were for items purchased by Mr. D at Ms. C’s request. One receipt documented money Mr. D gave Ms. C at her request so that she could purchase baby wipes while they were on sale. Testimony of Ms. C and Ex. 10, pp. 2-3.

As a threshold matter, the very limited circumstances under which such credits are allowed generally involve direct payments from the obligor to the custodian,²² whereas specific items purchased for the children by an obligor are usually viewed as gifts, not child support.²³ Here, all but one of the receipts was for specific items purchased by Mr. D and then given to Ms. C – in other words, the type of transaction for which “credits” are typically not allowed.²⁴ But even if these particular purchases were treated as “direct payments” rather than “in-kind” support,²⁵ and even if those direct payments otherwise satisfied the narrow requirements of AS 25.27.020(b) – which does not appear to be the case – Mr. D *still* would not be entitled to credit against his child support obligation under the facts of this case.

Even under the limited circumstances where credits for direct payments would otherwise be available, no such credits are allowable where, as here, the custodian is receiving public assistance. When a custodian is receiving public assistance benefits, child support payments are owed to the State, not to the custodian.²⁶ Because the obligor’s liability is to the State, neither payments nor in-kind support to the custodian are creditable against a support obligation, even under the very limited circumstances under which such credit would otherwise be available.²⁷

²² The March 2015 Administrative Child Support and Medical Support Order cautions: “The giving of gifts, clothing, or other items will not fulfill your child support obligation.” Ex. 7, p. 6.

²³ *CSED v. Campbell*, 931 P.2d 416 (Alaska 1997).

²⁴ Testimony of Ms. C and Exhibit 10, pp. 2-3.

²⁵ When it addressed this issue in *Campbell*, the Alaska Supreme Court was concerned that allowing an obligor parent to designate specific items purchased for the children as “child support” improperly removes decision-making authority away from the custodial parent, who is in the best position to know the children’s needs. 931 P.2d at 420. At the same time, the Court acknowledged that this was a “general rule” to which exceptions might apply. *Id.* Here, it is undisputed that the items at issue here were purchased by Mr. D at Ms. C’s specific request, and were purchased by Mr. D because, at the time, Ms. C had no car and therefore had limited ability to go to the store to make such purchases. These expenditures would appear to fall outside of the specific concerns raised by the Court in *Campbell*.

²⁶ AS 25.27.120.

²⁷ 15 AAC 125.465(f). Nothing in this decision is intended to suggest that the payments or purchases at issue here would otherwise entitle Mr. D to credits even if B was not a public assistance beneficiary. In addition to the other issues discussed herein, CSSD’s regulations only authorize credit for direct payments made “before the time the obligor is ordered to make payments through the agency,” and only if the direct payments were not made before the first date support is due in the administrative child support action. AS 25.27.020(b). The March 2015 Administrative Child Support and Medical Support Order includes a bolded warning to the parties: “**Do not make payments directly to the custodian after receipt of this notice and order.**” Ex. 7, p. 6 (emphasis in original). Mr. D is cautioned that all future payments should be made as provided for in the parties’ Amended Administrative Child Support and Medical Support Order.

At all times relevant to this appeal, Ms. C has been receiving public assistance on B's behalf. Without in any way minimizing Mr. D's efforts to ensure that B has necessary items at both parents' homes, nor these parents' admirable communication and cooperation as to these issues, the law prohibits a credit under these circumstances. Accordingly, Mr. D is not entitled to credits towards his child support arrears or monthly support obligation based on cash or in-kind payments made to Ms. C.

IV. Conclusion

Mr. D did not meet his burden of proving that the child support calculation in the May 2015 Amended Administrative Child Support and Medical Support Order is incorrect.

V. Child Support Order

1. N E. D is liable for child support in the amount of \$354.56 per month for one child, effective June 1, 2015 and ongoing.
2. All other terms of the March 3, 2015 Administrative Child Support and Medical Support Order, as amended by the Amended Administrative Child Support and Medical Support Order dated May 21, 2015, remain in full force and effect.

Dated: September 1, 2015

Signed _____
Cheryl Mandala
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 within 30 days after the date of this decision.

DATED this 15th day of September, 2015.

By: *Signed* _____
Signature
Cheryl Mandala
Name
Administrative Law Judge
Title

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