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

IN THE MATTER OF:	)	
	)	OAH No. 15-0936-CSS
H L. E	)	CSSD No. 001195827[1]
	)	

DECISION AND ORDER

I. Introduction

H E has a young daughter, T, who resides with her mother, D N. Both Mr. E and Ms. N appealed an Administrative Review Decision and Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on June 12, 2015. The formal hearing was held on September 28, 2015. Mr. E represented himself. Ms. N was represented by counsel, Steven Pradell. Joseph West, Child Support Specialist, represented CSSD. The record closed on February 3, 2016, but subsequently it was twice reopened so that CSSD could supplement its calculations regarding Mr. E's income and applicable deductions.

Having thoroughly reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that CSSD's second post-hearing submission to the record, containing supplemental calculations, correctly sets forth Mr. E's child support obligations.[2] Therefore, Mr. E's ongoing support obligation is set at $698 per month, effective April 1, 2016. His past due arrears will be calculated based on his ability to pay beginning on August 1, 2013, as set forth in CSSD's second post-hearing submission to the record, taking into account any payments he has already made for T's support.

II. Facts And Procedural Background

A. Facts Regarding Mr. E's Children And Employment

Mr. E is the father of now three-year-old T, who was born on 00/00/2013.[3] T currently lives with her mother, Ms. N, in Nevada. Mr. E lives in Anchorage and also has a seven-year old son, R, with his ex-wife, K P.[4] During the period relevant to this appeal, R lived with Mr. E

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1 This revised decision has been issued pursuant to 2 AAC 64.350(b), to correct a manifest typographical error in the case caption by inserting the correct agency case number.

2 A copy of CSSD's second post-hearing Submission to Record and the attached exhibit 17 are attached to this Decision and incorporated herein by reference.

3 Mr. E's paternity of T was not in dispute in this appeal.

4 E testimony.

from January 2014 through October 2014. Beginning November 1, 2014 Mr. E was ordered to pay $300 per month in child support for R; that obligation was increased to $594 per month as of April 1, 2015. He also paid court-ordered spousal support of $2000 per month to Ms. P, from March 1, 2014 until the end of 2014. Mr. E also has a son and daughter from a prior marriage who reside in Colorado, but both were past the age of majority as of the date of the hearing.[5]

At the time that Ms. N applied for CSSD's services in August 2013,[6] Mr. E was working for No Name, LLC as Executive Director for Operations, a medical office manager position.[7] He was terminated from that position in August 2014.[8] Mr. E was unemployed from that point until mid-January, 2015, when he became the office manager at No Name, Inc. He was terminated from that position, however, at the end of a three-month probationary period, in mid-April, 2015.[9] Mr. E remained unemployed through the date of the hearing; subsequently, however, he filed a notice indicating that he had started work as the Practice Manager at No Name Clinic as of January 25, 2016.

Mr. E's income over the relevant timeframe can be summarized as follows. In 2013, when Ms. N applied for child support services, Mr. E earned approximately $208,000 in salary and bonuses from No Name ("No Name, LLC").[10] In 2014, he earned approximately $184,000 in salary and bonuses at No Name, LLC, up until his termination in August 2014. In 2015, Mr. E earned approximately $32,400 in salary and bonuses at No Name, until his employment ended in mid-April 2015.[11] At his new job with No Name Clinic, Mr. E earns a salary of $50,000 per year, along with expected bonuses of $4,000 per year.[12] Throughout the relevant period Mr. E

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5 Mr. E paid child support of $240 per month for his son E in Colorado, until E turned 18 and graduated from high school in May 2015.

6 Ms. N filed her application for child support services with the State of Montana, which conveyed the application to CSSD in Alaska.

7 E testimony.

8 Mr. E subsequently filed a lawsuit against his former employers regarding this termination; the case is still pending in federal district court in Anchorage.

9 E testimony.

10 This $208,000 income estimate is derived from documents provided by No Name which show that Mr. E received gross pay of salary and bonuses totaling $243,672.50 over the 14-month period from May 1, 2013 through June 30, 2014; that figure equates to approximately $208,000 per year. (Exhibit 8 attached to N Appeal, p. 2.) This estimate is very close to the $207,318 in gross wages shown on Mr. E's 2013 W-2 form from No Name. (Exhibit 51 attached to N Appeal.)

11 These income figures for 2014 and 2015 form the basis for both sets of CSSD's post-hearing supplemental calculations; Mr. E did not contest or object to any of these figures. *See* CSSD 4/29/16 Submission to Record.

12 E Notice of Employment, Jan. 28, 2016.

has also received approximately $18,000 per year in tax-free income from the Veterans Administration, as well as Permanent Fund Dividends from the State of Alaska. In addition, in 2014 and 2015 he received $3,940 and $1,280, respectively, in unemployment benefits.

B. Procedural background

Mr. E's child support obligation for T was originally set at $733 per month in April 2014. After Ms. N appealed that child support order, the Office of Administrative Hearings remanded the case back to CSSD to consider additional evidence that Ms. N contended had not been timely submitted by Mr. E to CSSD.

After the remand, CSSD entered the Administrative Review Decision and Amended Administrative Child Support and Medical Support Order ("Administrative Review Decision") at issue in this case on June 12, 2015. It set Mr. E's child support obligation for T at $1,157 per month, starting on July 1, 2015, and it set his arrears for past due child support at $34,612, for the period August 1, 2013 to June 30, 2015. Both Mr. E and Ms. N appealed that Decision, and their appeals were referred to the Office of Administrative Hearings (OAH).

The hearing in this matter was held on September 28, 2015. The parties then stipulated that the record would be kept open so that Mr. E could submit redacted banking records to Ms. N's counsel, while he would submit the same records in both redacted and unredacted form to the administrative law judge (ALJ) for an *in camera* review.[13] The purpose of the ALJ's *in camera* review was to confirm for Ms. N whether Mr. E's redactions had the effect of concealing any undisclosed sources or amounts of income. After conducting a detailed *in camera* review, the ALJ concluded that the redactions did not have that effect. Ms. N did not subsequently contend that the banking records contained any evidence of undisclosed income for Mr. E, nor did she request an opportunity to reopen the hearing to allow her to examine Mr. E regarding those records. The record was then closed as of February 3, 2016.

Subsequently the record was reopened by order dated March 10, 2016, so that CSSD could provide supplemental calculations based on Mr. E's actual income figures for the relevant

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[13] Mr. E expressed strenuous objections to being required to identify where or with whom he spends his money; Ms. N, on the other hand, requested disclosure of sources and amounts of Mr. E's income, as that information is relevant to his income for child support purposes. Accordingly it was agreed that Mr. E would redact information showing where or with whom he expends funds, and the ALJ would perform an *in camera* review of both the redacted and unredacted bank statements to ensure that the redactions did not have the effect of concealing sources or amounts of income. Detailed discussions of Mr. E's production of his banking records are contained in the 10/22/15 Order Regarding Post-Hearing Proceedings and the 12/16/15 Notice regarding *In Camera* Review, which are incorporated herein by reference.

timeframe. CSSD submitted those calculations on March 25, 2016, and each party filed responses to the calculations by April 6, 2016. The ALJ's review of the supplemental calculations, however, revealed that further supplementation was required due to the omission of a deduction credit for "in-kind" support for Mr. E's son R when living in Mr. E's home. CSSD then submitted a second set of supplemental calculations on April 29, 2016, and Ms. N filed her response on May 19, 2016. The record was then closed.

CSSD's second set of supplemental calculations used Mr. E's actual income figures, discussed above at pages 2-3, as the basis for determining his child support obligations. CSSD calculated that Mr. E owed child support for T as follows: $2,000 per month for August 2013 through December 2014;[14] $698 per month for January 2015 through December 2015;[15] and $934 per month going forward from January 2016.[16]

C. Request for Referral to Office of Special Prosecutions

While this matter was pending, Ms. N filed a request that OAH refer the case to the Office of Special Prosecutions.[17] She had previously requested that CSSD make such a referral;[18] CSSD's June 12, 2015 Order, however, did not provide a response to her request. In her filings in this proceeding, Ms. N stated that her request for a referral was based on her contention that Mr. E's failure to accurately report his income potentially constituted criminal violations. The primary factual basis for her contention was her allegation that for "5 or 6 consecutive quarters," No Name apparently failed to report Mr. E's income to the Alaska Department of Labor.[19]

Based on the evidence presented at the hearing, however, it is clear that any failure to report income to the Department Labor, to the extent that it may have occurred, would have been the fault of Mr. E's employer rather than Mr. E. And, although there may have been difficulties between Ms. N, Mr. E and CSSD regarding disclosure of Mr. E's income-related information, Ms. N's contentions regarding those difficulties do not come close to setting out a *prima facie*

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14 Exhibit 17, p. 8.

15 *Id.*

16 *Id.*

17 Ms. N's Supplemental Request for Referral to the Office of Special Prosecutions and Credibility Finding, 11/27/15.

18 *See* Ms. N's exhibit 21, pp. 4-21.

19 Ms. N's Supplemental Request for Referral to the Office of Special Prosecutions and Credibility Finding, pp. 1-3.

case of criminal non-disclosure by Mr. E. Ultimately Mr. E did disclose all required financial information pertaining to his income in this proceeding. Ms. N's request for referral to the Office of Special Prosecutions, therefore, is denied.

D. The Parties' Appeals

Ms. N raises a number of issues in her appeal of CSSD's Administrative Review Decision, arguing as follows:

1. Mr. E's arrears should be calculated from the date of T's birth (00/00/2013) rather than from August 2013, the month when Ms. N first applied for child support services (in Montana);
2. CSSD should have imputed potential income to Mr. E, because he was voluntarily and unreasonably unemployed or underemployed;
3. CSSD did not base its calculations on Mr. E's actual income, because Mr. E underreported his income;
4. CSSD should not have denied Ms. N's request for subpoenas to obtain employment and income-related information from Mr. E's employers;
5. CSSD should have granted Ms. N's request for referral to the Office of Special Prosecutions, "to see if any statutes were breached based upon problems with the disclosure of information to the agency and other issues;"[20]
6. Mr. E failed to report "his true financial picture," citing a "family trust," his "25 million dollar whistleblower lawsuit"[21] against his former employers at No Name, and his failure to file his 2013 tax return; and
7. CSSD should have removed the $120,000 "income cap" set by Civil Rule 90.3(c)(2).

In his own appeal, Mr. E asserts simply that CSSD erred in the Administrative Review Decision as follows: "[M]y reduction in income exceeding greater than 15% was not taken into account. I was not employed from mid-August 2014 until mid-Jan. 2015 and late April 2015 – present. All calculations appear to be based on prior income levels."[22]

Because both Mr. E and Ms. N filed appeals in this matter, each party bears the burden of proving by a preponderance of the evidence that the agency's order was incorrect.[23]

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20 Ms. N's Appeal of Administrative Review Decision, pp. 7-8.

21 *Id.* at pp. 8-9.

22 Mr. E's Appeal of Administrative Review Decision.

23 15 AAC 05.030(h).

III. Discussion

A. Child Support Calculation

1. *The Starting Date For Child Support For T*

As her first point raised on appeal, Ms. N argues that Mr. E's child support obligation should have been initiated as of T's date of birth, 00/00/2013, rather than the month in which she first applied for child support services with the State of Montana, August 2013. She points to various communications she sent to Mr. E prior to T's birth and argues that she has "satisfied the requirements showing that Mr. E knew of his Child Support obligation to T from her date of birth," and therefore the date of birth is the appropriate starting date.[24]

CSSD's authority on this question, however, is directly covered by an agency regulation, 15 AAC 125.105(a)(2), which states as follows: "if initiated by a parent, the agency will establish arrears beginning with the month the custodial parent most recently applied for the agency's services."[25] Other than pointing out that Mr. E was likely on notice of the imminent birth of T, Ms. N has not presented any cogent argument or citation to controlling authority that would dictate a different result. Accordingly, CSSD was correct in using August 1, 2013 as the starting point for calculating Mr. E's arrears for past due child support.

2. *Imputing Potential Income To Mr. E*

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 specified mandatory deductions such as taxes, Social Security, spousal support for a prior relationship, or child support for a prior child. For purposes of calculating a parent's obligation to pay arrears, unless the parent is voluntarily and unreasonably unemployed or underemployed, CSSD is required to base the calculation on the parent's actual, total income.[26] Similarly, unless there is a finding that the parent is voluntarily and unreasonably unemployed or underemployed, the determination of the ongoing support amount is to be based on the non-custodial parent's expected annual income when the support is to be paid.[27]

Ms. N argues on appeal that CSSD should have imputed additional income to Mr. E,

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24 Appeal of Administrative Review Decision, pp. 2-3.

25 CSSD correctly deemed Ms. N's application for services in the State of Montana, in August 2013, to be an application for CSSD's services.

26 15 AAC 125.050(b); 15 AAC 125.060.

27 15 AAC 125.050(c); 15 AAC 125.060.

based on his prior history of relatively high earnings. Mr. E, on the other hand, argues that CSSD improperly imputed income to him for 2015, even though he had already been terminated from his job at No Name as of April 2015, more than a month before the Administrative Review Decision was issued by CSSD. Each party bears the burden of establishing by a preponderance of the evidence that their position on the imputation issue is correct.

In the Administrative Review Decision, CSSD found that "there was no evidence showing and no finding that [Mr. E] is voluntarily and unreasonably unemployed or underemployed."[28] Mr. E's earnings reached a high point of approximately $240,000 per year in 2013 (including discretionary bonuses). Ms. N contends that since leaving his employment at No Name, LLC, Mr. E has been voluntarily and unreasonably unemployed or underemployed, and that therefore his child support obligations should be based on his "income earning potential."[29] She has reiterated this argument in her response to CSSD's second submission of supplemental calculations, contending that Mr. E's new employment at No Name Clinic ("No Name Clinic") constitutes a "choice to change his career field to animal health."[30] She further argues that Mr. E's choice to "reduce his income to the current rate of $54,000 per year" at the No Name Clinic job "is not acceptable as meaningful employment . . . especially considering that it is approximately 1/5 of what he was previously making in the human health field."[31]

Ms. N cites a recent decision of the Alaska Supreme Court, *Sharpe v. Sharpe*, 366 P.3d 66 (Alaska 2016), in support of her argument for imputation of higher income to Mr. E. The *Sharpe* case, however, involved a non-custodial parent who quit a high-paying job and moved to a village in Bush Alaska, where she planned to adopt a subsistence lifestyle; the parent in fact readily admitted that she was voluntarily unemployed.[32] This fact pattern is a far cry from Mr. E's situation, where he has been terminated from two positions during the timeframe relevant to this appeal, and he has sued his former employers at No Name, LLC for wrongful termination. In addition, the cases discussed by the court in *Sharpe* all involved situations where the obligor made a **voluntary** job change or career change.[33] The *Sharpe* court emphasized that "the

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28 Administrative Review Decision, p.2.

29 Ms. N's Response to CSSD Second Submission to the Record, p. 1.

30 *Id.* at p. 2.

31 *Id.*

32 *Sharpe*, 366 P.3d at 67.

33 *See, e.g., Pattee v. Pattee*, 744 P.2d 658, 659 (Alaska 1987) (obligor voluntarily quit job to attend college in

relevant inquiry when imputing income is whether a parent's current situation and earnings reflect a voluntary and unreasonable decision to earn less than the parent is capable of earning."[34] Ms. N has presented no evidence that Mr. E's periods of unemployment, or his reduced salaries when employed, have been the result of voluntary actions on his part.

On the contrary, the evidence in the record supports Mr. E's contention that the two instances when his employment was terminated were **not** the result of his voluntary actions, but in fact were terminations imposed on him by those employers. As to his subsequent periods of unemployment, Mr. E testified credibly that he has diligently sought employment in his field of medical office management. Although he did not present documentary evidence regarding his efforts to find work, Mr. E testified credibly that he has consistently sought work within his career field, in the Anchorage area.[35] His testimony has been borne out by the fact that he has been able to obtain two legitimate jobs in his career field since his termination from employment at No Name, LLC.[36] Based on the foregoing discussion, Ms. N did not meet her burden of establishing that Mr. E was voluntarily and unreasonably unemployed or underemployed.

Regarding Mr. E's claim that the Administrative Review Decision improperly imputed income to him for 2015, it is important to note that CSSD stated in that Decision that "there was no evidence showing and no finding that [Mr. E] is voluntarily and unreasonably unemployed or underemployed."[37] Yet CSSD did in fact impute income to Mr. E for 2015, based on the salary he had received until his termination from employment at No Name in mid-April 2015. CSSD was on notice of that termination when it entered the Administrative Review Decision in mid-June 2015, and imputing income for the remainder of that year was inconsistent with the statement quoted above.

Washington); *Pugil v. Cogar*, 811 P.2d 1062, 1064 (Alaska 1991) (obligor voluntarily quit job to attend engineering school in Texas); *Olmstead v. Ziegler*, 42 P.3d 1102, 1103–04 (Alaska 2002) (obligor left practice of law to become a teacher).

34 *Sharpe*, 366 P.3d at 71 (internal citations and quotation marks omitted).

35 Mr. E testified that he has endeavored to stay in Anchorage so that he can be close to his son R, who lives with Mr. E's ex-wife in the Anchorage area.

36 Ms. N's assertion that Mr. E has changed his career field from "human health" to "animal health" is without merit. Mr. E's three jobs during the timeframe relevant to this case have all been in the field of medical office management and administration.

37 Administrative Review Decision, p.2.

Mr. E has met his burden of proof on the issue of imputation of income. His child support obligations should be based on his actual income over the relevant period.[38] The undersigned ALJ issued the March 10, 2016 order directing CSSD to perform supplemental calculations in anticipation of reaching this conclusion regarding imputation. CSSD's April 29, 2016 second post-hearing Submission to Record correctly calculates Mr. E's total income over the relevant period, as described on pages 2-3 of this Decision. It also correctly sets out his past and ongoing child support obligations, as described on page 4 of this Decision. CSSD's findings in the Submission to Record, therefore, are hereby adopted as part of this Decision.[39]

B. Ms. N's Allegation That Mr. E Underreported His Income

Ms. N's third point on appeal, that Mr. E underreported his income, also encompasses her sixth point on appeal – that Mr. E "failed to report his true financial picture." These arguments are based on her allegation that Mr. E attempted to hide assets in a "family trust," that he failed to disclose the fact that he is seeking a $25 million recovery in his lawsuit against No Name, LLC, and that he has yet to file his 2013 federal income tax return.[40] Ms. N also alleges that information received from No Name, LLC regarding Mr. E's income from No Name, LLC was tainted because of his personal relationship with another No Name, LLC employee who was involved in reporting his income.

At the hearing, Mr. E more than adequately responded to each of these allegations. As to the "family trust," he testified credibly that there is actually no family trust, but only a rural cabin in Colorado that he jointly owns with several members of his family. Equally important is the undisputed fact that the cabin generates no income for Mr. E.[41] He explained that an attorney in his Anchorage divorce erroneously used the term "family trust" when referring to the cabin in a filing with the divorce court, and that term was then used in the divorce decree.[42]

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38 The ALJ issued the March 10, 2016 order directing CSSD to perform supplemental calculations in anticipation of reaching this conclusion regarding imputation.

39 It must be noted that the Summary of Support Calculation page included with the second post-hearing Submission to Record (exhibit 17, p. 8) appears to omit consideration of child support payments Mr. E has made for T; CSSD should take these payments into account in calculating the amount of Mr. E's arrearages.

40 Ms. N's appeal also asserts that Mr. E's 2015 income was understated because No Name had promised to raise his salary from $70,000 to $100,000 as of May 2015. This argument is without merit, however, as Mr. E's employment there was terminated in mid-April 2015, and it is undisputed that his salary was never actually increased to $100,000.

41 E testimony.

42 *Id.*

Ms. N's allegation regarding Mr. E's lawsuit against No Name, LLC is without merit. The fact that Mr. E may be seeking a substantial amount of damages for allegedly being wrongfully discharged from employment has no bearing on his obligation to accurately report his income on an ongoing basis. If and when Mr. E recovers any damages from the No Name, LLC lawsuit, he will undoubtedly report it to Ms. N and CSSD on a timely basis. Until he actually recovers damages, however, the existence of the lawsuit has no bearing on his current child support obligations.

Regarding the 2013 tax return, Mr. E admitted that as of the date of the hearing it had not yet been filed. He testified that this was due to the fact that his ex-wife refused to sign the return until Mr. E had funds in hand to pay the tax debt for 2013.[43] But this Decision has already found that Mr. E has disclosed all pertinent financial information for the relevant period, and his total income for 2013 is no longer in dispute.[44] The fact that the 2013 tax return may not have been filed, therefore, is irrelevant to the question of how much child support Mr. E owes for T.

Lastly, Ms. N alleges that information from No Name, LLC was somehow tainted because of Mr. E's personal relationship with another No Name, LLC employee. Ms. N never adduced any evidence in support of this allegation. In any event, the fact that Mr. E's total income for 2013 and 2014 is no longer in dispute in this appeal renders this a non-issue.

Ms. N did not meet her burden of proof regarding allegations of underreporting of income by Mr. E.

C. Ms. N's Contention That CSSD Should Have Issued Subpoenas

Ms. N asked CSSD to issue broad subpoenas for Mr. E's employment and income-related information, but CSSD denied her request. She then renewed that request prior to the hearing in this matter, citing the issues discussed above regarding Mr. E's alleged underreporting of his income and No Name, LLC's apparent failure to report his income to the Department of Labor for a lengthy period of time. The ALJ denied the request, based in part on Mr. E's agreement to produce his banking records to Ms. N.[45] Ultimately those records were produced to Ms. N, albeit after the hearing and in redacted form. The redactions were done pursuant to an agreement between the parties, however, and Ms. N never requested an opportunity to question Mr. E about

43 *Id.*

44 Neither party contested or objected to the income figures stated in CSSD's supplemental filings that were submitted after the hearing.

45 *See* 9/22/15 Order on Pending Motions for discussion of the denial of the request for subpoenas.

the banking records after they were received. Thus CSSD's failure to issue subpoenas was addressed through the discovery process in this appeal, rendering Ms. N's contentions on this issue moot.

D. Ms. N's Request For Referral To The Office Of Special Prosecutions

This issue has already been addressed in section II.C above. Ms. N did not present any *prima facie* evidence that a crime was possibly committed in connection with Mr. E's disclosure or non-disclosure of information in this child support matter. To the extent that there were questions or lack of clarity concerning Mr. E's income over the relevant period, they have now been resolved. There is no basis, therefore, for granting Ms. N's request.

E. Ms. N's Contention That The $120,000 "Income Cap" Should Be Waived

Civil Rule 90.3(c)(2) provides that the normal methodology for calculating child support where one parent has primary custody "does not apply to the extent that the parent has an adjusted annual income of over $120,000." The rule provides that "in such a case, the court may make an additional award only if it is just and proper, taking into account the needs of the children, the standard of living of the children and the extent to which that standard should reflect the supporting parent's ability to pay." Ms. N urged CSSD to waive the cap; the agency denied the request in the Administrative Review Decision, stating simply that "Ms. N did not present testimony or evidence showing that it is just and proper." She renewed that request in this proceeding, and she submitted a post-hearing brief on the issue. In her brief Ms. N argued that "Mr. E is capable of earning income that is at least twice the Alaska income cap," citing to his gross income of $243,000 at No Name, LLC from May 2013 through June 2014. Her brief then digresses into discussion of her various allegations regarding alleged underreporting of income, tainted information from No Name, LLC, and delays that allegedly resulted from those issues and caused her to incur "approximately $40,000 in legal expenses for the benefit of T."[46] She then cites to commentary to Civil Rule 90.3 regarding imputation of income and conflates that discussion with the analysis regarding when the income cap can be exceeded. Ms. N does this in order to argue that Mr. E's child support should be based on his income-earning potential and that the income cap should be removed on an ongoing basis.[47]

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46 Ms. N's Written Argument Re: $120,000 Income Cap Issue, 10/20/15.

47 *Id.* at p. 5.

The only actual evidence cited by Ms. N in support of her argument for removing the income cap is Mr. E's testimony to the effect that he wants T to have a life similar to what he has provided for his other children. Ms. N presented no evidence directly addressing the factors set forth in Civil Rule 90.3(c)(2), such as, e.g., how T's needs are not being met, or how T's standard of living "should reflect [Mr. E's] ability to pay" additional child support. In the absence of such evidence, Ms. N's allegations that Mr. E has hidden his income and influenced his employer to aid and abet that effort are insufficient. I find there is no cognizable basis for removing the income cap for the years 2013 and 2014, when Mr. E earned income in excess of $120,000. Given that this Decision has already concluded that imputation of additional income would be inappropriate, there is also no basis for removing the income cap going forward on an ongoing basis. Ms. N did not meet her burden of establishing that the income cap should be removed or waived.

IV. Conclusion

Ms. N did not meet her burden of proof on the points raised in her appeal. Mr. E met his burden regarding CSSD's apparent imputation of income to him in 2015. His child support obligation will be based on his actual income.

CSSD's most recent submission to the record, dated April 29, 2016, correctly sets forth Mr. E's past and ongoing child support obligations, with the exception of the previously-noted omission of credit for child support payments already made.[48] Mr. E's support amount was calculated under Civil Rule 90.3(a), applying the income cap under Civil Rule 90.3(c)(2) for 2013 and 2014, and no hardship variance under Civil Rule 90.3(c)(1) was requested or granted.

V. Child Support Order

- Mr. E's past support obligation for 2013 and 2014 was $2000 per month, beginning on August 1, 2013;[49]
- Mr. E's past support obligation for 2015 was $698 per month;[50]

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48 *See* footnote 37. *CSSD's* 4/29/16 Submission to Record also appears to have overstated Mr. E's credit for spousal support in 2014 by $4000. He paid $2000 per month in spousal support beginning in March 2014, but CSSD appears to also have given him credit for spousal support payments for January and February 2014. *See* CSSD 4/29/16 Submission to Record, exhibit 17, pp. 2-3 (Child Support Guidelines Worksheets for tax year 2014A). CSSD need not correct this apparent error, however, as it would not result in a 15% change in Mr. E's support obligation for 2014 for purposes of calculating his child support arrears. *See Duffus v. Duffus*, 72 P.3d 313, 321 (Alaska 2003).

49 Exhibit 17, p. 8.

50 *Id.*

- Mr. E's ongoing child support obligation for T is set at $934 per month, effective January 1, 2016;[51]
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated June 12, 2015 remain in full force and effect

DATED this 11th day of June, 2016.

Signed
Andrew M. Lebo
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 1st day of July, 2016.

By: *Signed*
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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

51 *Id.*