

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

In the Matter of)	
)	
O B. F)	OAH No. 15-1124-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 001183747

DECISION AND ORDER

I. Introduction

O B. F appealed an Administrative Child Support and Medical Support Order setting her monthly child support for her daughter, D, at \$178 per month and establishing \$4,354 in arrears for past-due support. Upon full consideration of the evidence in the record, this decision sets Ms. F’s monthly support obligation for ongoing support for D at \$168 per month, effective August 1, 2014, and recalculates Ms. F’s monthly support obligation for pre-order arrears as set forth below.

II. Facts

O F and Q Z are the parents of D, age eight. D lives with Mr. Z in Anchorage; Ms. F lives in No Name.

In May 2012, the Department of Public Assistance notified CSSD that public assistance was being received on D’s behalf as of January 2012. This led CSSD to open a child support case, and in May 2012, CSSD issued both parents an Administrative Order to Provide Financial and Medical Insurance Information.¹

CSSD initially issued an Administrative Child Support and Medical Support Order in August 2012, but was unable to serve Ms. F with that Order.² In July 2014, CSSD issued a new Administrative Child Support and Medical Support Order that was finally served on Ms. F on May 19, 2015.³ Because neither parent had provided information in response to CSSD’s inquiries, the July 3, 2014 Administrative Child Support and Medical Support Order calculated Ms. F’s monthly child support obligation for D based on a total gross income amount derived from a mix of employer-reported income data and minimum wage

¹ Ex. 1.
² CSSD Case Presentation.
³ Ex. 3.

amounts.⁴ CSSD followed this method for setting both pre-order arrears and ongoing support.⁵

The Administrative Order explains in detail the methods used to calculate Ms. F's monthly support obligation for 2012, 2013, and 2014. For 2012, CSSD calculated Ms. F's monthly support obligation based on income consisting of three quarters of actual reported income, one quarter of minimum wage data, and the Alaska Permanent Fund Dividend (PFD). Ms. F's employer-reported earnings from 2012 totaled \$1,527.75 over three quarters. CSSD used this actual amount for those three quarters, added an income amount based on full-time minimum wage work for the remaining quarter, and included the 2012 PFD amount to calculate a total gross income for 2012 of \$6,435.75.⁶ After mandatory deductions, CSSD calculated Ms. F's 2012 support obligation under Rule 90.3 as \$81 per month.⁷

For 2013, CSSD again calculated Ms. F's monthly child support obligation for D based on a mix of actual reported income, minimum wage data, and the PFD. For that year, the Department of Labor database showed for Ms. F one quarter of employer-reported income totaling \$1,417.46.⁸ CSSD used this actual amount for that quarter, and then added \$12,090 to reflect three quarters at the full-time minimum wage.⁹ With the 2013 PFD amount included, CSSD based Ms. F's child support calculation for 2013 on a total gross income of \$14,407.46, calculating the monthly child support obligation at \$178 per month.¹⁰

For 2014, CSSD again based Ms. F's monthly support obligation for D on a mix of one quarter of actual reported income and three quarters of minimum wage data.¹¹ Using the same methodology as the previous year, and also including an assumed PFD amount, CSSD calculated Ms. F's monthly support obligation for D at \$165 per month.¹² However,

⁴ Ex. 2, pp. 5, 8.

⁵ Ex. 2, pp. 5, 8.

⁶ Ex. 2, pp. 5, 9.

⁷ Ex. 2, p. 9.

⁸ Ex. 10, p. 1.

⁹ Ex. 2, p. 5.

¹⁰ Ex. 2, p. 10.

¹¹ Ex. 2, p. 8. This again resulted in \$12,090 in gross income based on the minimum wage data, as well as \$473.41 in actual reported gross income.

¹² Ex. 2, p. 11. At the time the Order was issued in July 2014, the actual amount of the 2014 PFD had not yet been announced. The 2014 Child Support Guidelines Worksheet included with the Order thus applies the amount of the 2013 PFD.

\$165 was not more than a 15% change from the previous year's monthly support obligation, CSSD continued Ms. F's monthly support obligation at the 2013 level of \$178 per month.¹³

Based on the foregoing calculations, the July 3, 2014 Administrative Child support and Medical Support Order set Ms. F's monthly support obligation for D at \$178 per month beginning August 1, 2014,¹⁴ and assessed pre-order arrears totaling \$4,354 for the period of January 1, 2012 through July 31, 2014.¹⁵

III. Procedural History

CSSD served Ms. F with the July 2014 order via process server on May 19, 2015.¹⁶ Ms. F then requested an administrative review of the July 2014 Order.¹⁷ An administrative review scheduled for July 6, 2015 was rescheduled at Ms. F's request.¹⁸ However, neither parent then participated in the rescheduled review.¹⁹ Accordingly, on July 10, 2015, CSSD issued an Administrative Review Decision affirming the July 2014 Order.²⁰

On August 3, 2015, CSSD received Ms. F's appeal of that decision.²¹ Ms. F's appeal read: "I want to contest this because I'm currently homeless and unemployed. I'm working on trying to get stable. I'm living off of food stamps alone."²²

The Department of Revenue referred Ms. F's appeal to the Office of Administrative Hearings on August 17, 2015. A Notice of Hearing scheduling the hearing for September 15, 2015 was sent to both parents via certified mail. Both parents signed the certified mail "green card" reflecting receipt of the Notice of Hearing.

The hearing was convened as scheduled on September 15, 2015. CSSD representative Delinda Cain and Mr. Z participated telephonically. Ms. F was unable to be reached at the time set for hearing, and the hearing was held in her absence pursuant to 15 AAC 05.030(j).²³

¹³ Ex. 2, p. 8.

¹⁴ Ex. 2, p. 1.

¹⁵ Ex. 2, p. 2.

¹⁶ Ex. 3.

¹⁷ Ex. 4.

¹⁸ CSSD Pre-hearing brief, p. 1; CSSD Hearing Presentation.

¹⁹ CSSD Pre-hearing brief, p. 1; CSSD Hearing Presentation.

²⁰ Ex. 5.

²¹ Ex. 6.

²² Ex. 6.

²³ Ms. F did not answer her phone at the time set for the September 15, 2015 hearing, and did not return a message left for her until after the hearing had concluded. Ms. F contacted the OAH by phone after the

Following the September 15, 2015 hearing, the record initially remained open for ten days for CSSD to submit further information about the basis for its calculations, and to allow Ms. F to show cause for her failure to appear. CSSD submitted a supplemental filing with more detailed income records and a caseworker-generated Administrative Support Order Worksheet documenting the information used to prepare the Administrative Child Support and Medical Support Order.²⁴ No other submissions were received. Nonetheless, on October 2, 2015, the Administrative Law Judge issued an Interim Order reopening the record and scheduling an additional hearing session to address questions raised by CSSD's exhibits and to allow Ms. F an additional opportunity to present any evidence or argument in support of her appeal.

The second hearing session was held on November 2, 2015. Once again, Ms. Cain and Mr. Z participated telephonically, but Ms. F was unable to be reached at her phone number of record and did not return a message left for her on her voice mail. Following the second hearing session, the record was held open until November 13, 2015 for CSSD to submit a revised proposed support calculation, and for Ms. F to show cause for her failure to appear. CSSD submitted its revised proposed calculations on November 9, 2015;²⁵ the record closed without further submissions by any party.

IV. Discussion

A parent is obligated both by statute and at common law to support his or her children.²⁶ Child support obligations are determined under Alaska Civil Rule 90.3. 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 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."²⁷

By regulation, CSSD collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on the

hearing had ended, and was advised that she had ten days to submit documentation of good cause for her failure to appear. She did not submit any documentation.

²⁴ Ex. 9; Ex. 10.

²⁵ The documents attached to this are identified and admitted as Exhibit 11.

²⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁷ Civil Rule 90.3, Commentary I.B.

child's behalf.²⁸ In this case, Mr. Z began receiving public assistance on D's behalf in January 2012, so that is the first month in which Ms. F is obligated to pay support in this administrative child support action.

As the party who filed the appeal, Ms. F has the burden of proving by a preponderance of the evidence that CSSD's Administrative Child and Medical Support Order is incorrect.²⁹ Because of the differences in regulations governing the establishment of ongoing support obligations versus the setting of pre-order arrears, this Decision will separately address first the establishment of arrears, and then the ongoing support obligation.

A. Support Obligation for Past-Due Support

As described above, the July 3, 2014 Administrative Child Support and Medical Support Order assessed pre-Order arrears totaling \$4,354 for the period of January 1, 2012 through July 31, 2014, based on a monthly support obligation of \$81 per month during 2012, and \$178 per month thereafter.³⁰ CSSD reports that the support obligation was based on "actual earning as reported to the Department of Labor and Workforce Development for the time periods information was available and imputed minimum wage for the time periods where there was no information."³¹ But, while that method may be appropriate for setting an ongoing support obligation, CSSD's regulations treat the determination of "total income from all sources" differently for purposes of arrears than for calculation of ongoing support.³²

When CSSD calculates arrears, 15 AAC 125.050(b) requires they be calculated based on the parent's "actual total income" for the support period except where a determination is made that the parent is voluntarily unemployed or underemployed under 15 AAC 125.060. Because CSSD expressly does not contend that Ms. F was voluntarily unemployed or underemployed during the time periods for which it has calculated arrears, the arrears calculations must be based on Ms. F's "actual total income."³³

The regulation identifies three possible scenarios for determination of that amount, based on the extent of information available to the agency. Where the agency has "complete

²⁸ 15 AAC 125.105(a)(1)-(2).

²⁹ 15 AAC 05.030(h).

³⁰ Ex. 2, pp. 2, 12.

³¹ October 26, 2015 CSSD Submission (citing 15 AAC 125.050(b)(2) and (3)(B) (sic)).

³² Compare 15 AAC 125.050(b); with 15 AAC 125.050(c).

³³ 15 AAC 125.050(b).

information concerning the parent’s total income for a year for which support is being calculated,” the support obligation “for that year” is to be based solely on that income information, “even if the parent worked less than full time or worked sporadically during the year.”³⁴ Where instead the agency has only “limited information concerning the parent’s actual total income for a year for which support is being calculated,” the agency is to “estimate the parent’s total income for that year.” In such a scenario, that estimated total income is to be “based on the parent’s earnings in prior or subsequent years, job skills, training, work history, and education, and the employment available in the area where the parent physically resides[.]”³⁵

It is only where CSSD has “*no information* concerning the parent’s total income in a past year” that it may base the arrears calculation on the minimum wage.³⁶ This is a different rule than applies to the calculation of ongoing support. For purposes of calculating ongoing support, CSSD’s regulations authorize consideration of the applicable minimum wage as one of many possible factors to consider in identifying “the parent’s expected actual income.”³⁷ But the only mention of minimum wage in the section of the regulation on arrears occurs in the context of setting arrears when the agency has “no information concerning the parent’s total income in a past year.”³⁸

Here, CSSD’s method for setting pre-order arrears – using actual income for some portions of the year and then imputed minimum wage income for others – is not consistent with 15 AAC 125.080(b). For each year for which CSSD calculated arrears in this case, some income information was available. Accordingly, and given its disavowal of any finding of voluntary underemployment, CSSD cannot base its support calculation for these years on an imputed minimum wage income. Either the employer-reported income in the Department of Labor and Workforce Development database constitutes Ms. F’s total income for each year in question, in which case 15 AAC 125.080(b)(1) applies, or that information constitutes “limited information” about Ms. F’s total income for the year in question, in which case the agency must turn to 15 AAC 125.080(b)(2).

³⁴ 15 AAC 125.050(b)(1).

³⁵ 15 AAC 125.050(b)(2).

³⁶ See 15 AAC 125.050(b)(3) (emphasis added).

³⁷ 15 AAC 125.050(c)(8).

³⁸ Compare 15 AAC 125.050(b)(2); with 050(c).

Ms. F's employer-reported earnings from 2012 totaled \$1,527.75 over three quarters. To calculate Ms. F's monthly support obligation for 2012, CSSD used this actual amount for those three quarters, but then used an imputed income amount based on full-time minimum wage work for the remaining quarter.³⁹ As established above, however, CSSD erred in including a quarter of full-time minimum wage earnings in this arrears calculation. Since CSSD does not find Ms. F voluntarily underemployed, and given CSSD's additional admission that it "doesn't know the extent of Ms. F's education, physical and mental health," the support amount for arrears must be based on an "actual total income" that is consistent with the available reported data.

CSSD's November 2015 revised proposed calculation remedies this issue. CSSD's revised proposed calculation is based on a total gross income of \$2,915 – the amount of the 2012 PFD plus \$2,037 in wages, an amount which appears to be extrapolated from Ms. F's three quarters of reported income.⁴⁰ With neither case party having raised any objections, CSSD's resulting revised proposed calculation of Ms. F's 2012 support obligation for arrears purposes at \$50 per month is accepted.

The same flaw exists in CSSD's initial 2013 calculation, and is likely remedied in CSSD's November 2015 revised proposed calculation. Once arrears are calculated "for the first year of the period for which support is being established," then for each subsequent year the agency must "determine whether a material change in circumstances occurred justifying a modification of the support amount for that year."⁴¹ But, as with the calculation of 2012 arrears, CSSD "imputed" several quarters of minimum wage income without any apparent regulatory authorization to set an arrearage amount on that basis.

The only evidence of Ms. F's actual income during 2013 is that she earned \$1,417.46 during the fourth quarter of that year; she had no other employer-reported earnings that year.⁴² There is thus no evidence to support CSSD's calculation derived from a gross income amount in excess of \$14,000. Additionally, given that Ms. F's reported income for 2013 was approximately \$110 less than her reported income for the prior year, the reported income likewise does not result in a material change to the child support calculation.

³⁹ Ex. 2, pp. 5, 9.

⁴⁰ Ex. 11, p. 1.

⁴¹ 15 AAC 125.105(e).

⁴² Ex. 10.

Accordingly, CSSD’s revised proposed calculation of Ms. F’s 2013 support obligation for arrears purposes at \$50 per month is accepted.⁴³

For the same reasons described above, CSSD’s method was flawed as to the 2014 pre-order monthly support obligation, which was set at \$178 per month.⁴⁴ CSSD’s revised proposed calculation for 2014 arrears uses a total gross income of \$5,321.32 – the amount of the 2014 PFD plus \$5,231.32 in wages, an amount which appears to have been extrapolated from Ms. F’s two quarters of reported 2014 income.⁴⁵ This evidence supports a finding of a material change in circumstances from the prior year and, with neither case party having objected, CSSD’s revised proposed calculation of Ms. F’s 2014 support obligation for arrears purposes at \$77 per month is accepted.

B. Calculation of Support Obligation for Ongoing Support

While the calculation of pre-order arrears is based on “the parent’s *actual* total income for the period for which support is being calculated,” calculation of an obligor parent’s ongoing monthly support obligation is based on “the total annual income the parent is *likely* to earn or receive when the child support is to be paid.”⁴⁶ And, unlike when setting pre-order arrears, CSSD may use a broader variety of sources – including minimum wage information – to determine the likely total income amount.⁴⁷

The obligor parent has the burden of proving his or her earning capacity.⁴⁸ Ms. F did not provide CSSD with any income information, nor with any evidence of any physical or other condition precluding her from working. Accordingly, for the periods of time that no other evidence of income was available, CSSD appropriately based the child support calculation on an income partially derived from minimum wage data, as the ongoing support obligation regulation expressly allows, and set Ms. F’s ongoing monthly support obligation for D at \$178 per month beginning August 1, 2014.

However, the records provided in CSSD’s post-hearing supplement reveal factual developments since the Order’s issuance that warrant a fresh look at the 2014 support

⁴³ CSSD’s revised proposed calculation for 2013 pre-order support uses a total gross income of \$2,937 – the amount of the 2013 PFD plus \$2,037 in wages, an amount which appears to have been extrapolated from Ms. F’s single quarter of reported income. Ex. 11, p. 2. Neither case party has objected to this calculation.

⁴⁴ See Ex. 2, pp. 10-11; Ex. 10, p. 1.

⁴⁵ Ex. 11, p. 2.

⁴⁶ 15 AAC 125.050 (c) (emphasis added).

⁴⁷ *Id.*

⁴⁸ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

amount. Specifically, the July 2014 Order set Ms. F's ongoing support obligation based on one quarter of employer-reported earnings, and three quarters of minimum wage data. But Ms. F later had another quarter of employer-reported earnings, earning \$2,187.25 in the fourth quarter of 2014.⁴⁹

Recalculating Ms. F's 2014 monthly support obligation using her two quarters of actual earnings and only two quarters of minimum wage-based earnings very slightly changes the monthly support obligation. Specifically, recalculation of Ms. F's monthly support obligation for 2014 using the newly-available actual income figures for both quarters (totaling \$3,290.66)⁵⁰ and only using the minimum wage figures for the two remaining quarters (totaling \$8,370)⁵¹ yields taxable gross income of \$11,660.66, compared with the \$12,563.41 in the Child Support Guidelines Worksheet. With all other inputs equal, Ms. F's taxable gross income would fall to \$12,560.66 (compared with the \$13,463.41 in the CSSD worksheet), yielding a monthly support obligation of \$153 for one child.⁵² However, the income calculation on which the support amount for 2014 was based also included the amount of the 2013 PFD, \$900, in its tally of total gross income.⁵³ But the actual amount of the 2014 PFD was \$1,884, not \$900.

When the annual gross income amount is adjusted to include the correct Dividend amount, even after reducing the annual wage income as described above, Ms. F's monthly support obligation under Rule 90.3 is \$168.⁵⁴

C. Financial Hardship

To the extent to which Ms. F's written appeal statement was intended to request for a hardship variance from the ongoing monthly support obligation, she did not meet her burden of proof for such a request. A parent may obtain a reduction in the amount calculated under Rule 90.3, but upon showing that "good cause" exists for the reduction. To establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."⁵⁵

⁴⁹ Ex. 9, p. 1.

⁵⁰ Ms. F had \$473.41 of employer-reported earnings for the first quarter of 2014, and \$2,817.25 of employer-reported earnings for the fourth quarter of 2014. Ex. 10, p. 1. Ex. 2, p. 8.

⁵¹ 1040 hours x 7.75 per hour = \$8,370.

⁵² <https://webapp.state.ak.us/cssd/guidelinecalc/> (last visited October 1, 2015).

⁵³ Ex. 2, p. 10.

⁵⁴ <https://webapp.state.ak.us/cssd/guidelinecalc/> (last visited October 1, 2015).

⁵⁵ Civil Rule 90.3(c).

The calculation of a child support obligation under Rule 90.3 is a separate inquiry from whether, in a particular circumstance, a variance from the support amount ordered is appropriate. Had Ms. F participated in the hearing process, she could have introduced evidence and answered questions that might inform the inquiry into whether “manifest injustice” would result if the support amount in this case were not varied. However, in light of Ms. F’s lack of participation, the record is devoid of evidence to support such a finding. This decision does not preclude Ms. F from seeking a hardship variance in the future by requesting modification.

IV. Conclusion

Ms. F’s support obligation for pre-order arrears is \$50 per month for 2012 and 2013, and \$77 per month from January 1, 2014 through July 31, 2014. Ms. F is liable for ongoing support in the amount of \$168 per month effective August 1, 2014. No hardship variance was granted.

V. Child Support Order

1. O F is liable for past-due child support in the amount of \$50 per month for one child, effective January 1, 2012 through December 31, 2013;
2. Ms. F is liable for past-due child support in the amount of \$77 per month for one child, effective January 1, 2014 through July 31, 2014;
3. Ms. F is liable for child support in the amount of \$168 per month for one child, effective August 1, 2014 and ongoing.
4. All other terms of the Administrative Child Support and Medical Support Order dated July 3, 2014 remain in full force and effect.

Dated: November 17, 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 1st day of December, 2015.

By: Signed
Signature
Cheryl Mandala
Name
Administrative Law Judge
Title

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