

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

In the Matter of	)	
	)	
K I. Z	)	OAH No. 15-1128-CSS
_____	)	Agency No. 001189404

**DECISION AND ORDER**

**I. Introduction**

The Child Support Services Division issued an Administrative Child Support and Medical Support Order on March 27, 2015, setting K Z’s monthly child support obligation for his son, H E, at \$194 per month. Mr. Z appeals. Because he did not meet his burden of proving that the Order is incorrect, Mr. Z remains liable for monthly child support for H, including past-due support amounts, as set out in the March 2015 Administrative Child Support and Medical Support Order.

**II. Factual and Procedural History**

**A. Facts**

K Z and T E are the parents of H, age ten. H lives in Alaska with Ms. E, while Mr. Z lives in California.

After receiving notification that Ms. E was receiving Native Tribal Assistance on H’s behalf, the Child Support Services Division (CSSD) opened a child support case for H.<sup>1</sup> On July 1, 2014, CSSD served the parties with an Administrative Order to Provide Financial and Medical Insurance Information for the time period from 2012 through 2014.<sup>2</sup> Mr. Z provided income documentation for 2012 and 2013, which CSSD received on July 28, 2014.<sup>3</sup>

On March 27, 2015, CSSD issued an Administrative Child Support and Medical Support Order, setting Mr. Z’s monthly child support obligation for H at \$194 per month.<sup>4</sup>

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<sup>1</sup> CSSD’s pre-hearing brief suggests the Native Tribal Assistance case opened in December 2012. However, the Summary of Support Obligation only lists support dating to January 2014. Ex. 3, p. 10. Likewise, the arrears order only dates back to January 2014. Ex. 3, p. 2. Accordingly, the public assistance case more likely than not opened in December 2014, not December 2012.

<sup>2</sup> Ex.1, p. 2.

<sup>3</sup> Ex. 2.

<sup>4</sup> Ex. 3, p. 1.

The order also found that Mr. Z owed past-due child support of \$2,910 for the period of January 1, 2014 through March 31, 2015.<sup>5</sup>

Mr. Z's 2012 W-2 shows that in 2012 he earned \$12,904 from No Name Enterprises, and \$4,760 from No Name, Inc. – a total amount of \$17,664 for the year.<sup>6</sup> His 2013 W-2 shows \$20,424 in gross wages from No Name, Inc.<sup>7</sup> Mr. Z did not provide income information for 2014 or 2015. Accordingly, for those years, CSSD calculated his support obligation based on the total income from a full-time minimum wage job.<sup>8</sup> The March 2015 Order indicated CSSD had calculated his support obligation in this way because Mr. Z had not provided any evidence of a medical condition or disability that prevented him from maintaining full-time employment.<sup>9</sup>

CSSD set Mr. Z's monthly support obligation for 2014 using an income figure based on the California minimum wage (\$9.00 per hour) multiplied by 2080 hours (40 hours per week times 52 weeks) – a total gross income of \$18,720.<sup>10</sup> CSSD then adjusted this income amount to give Mr. Z credit (1) for older children residing in the household, and (2) for state taxes.<sup>11</sup> CSSD then calculated Mr. Z's monthly support obligation based on this adjusted income. CSSD applied the same calculation for 2015, and again based Mr. Z's support obligation on a total gross income of \$18,720.<sup>12</sup>

CSSD served the March 2015 Order on Mr. Z on April 8, 2015.<sup>13</sup> On April 27, 2015, Mr. Z filed a Request for Administrative Review.<sup>14</sup> Mr. Z checked the box on the Request for Administrative Review form indicating he disagreed with the support amount “because my financial circumstances are not as CSSD determined.”<sup>15</sup> Mr. Z attached a written

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<sup>5</sup> Ex. 3, p. 2.

<sup>6</sup> Ex. 2, pp. 1-2.

<sup>7</sup> Ex. 2, p. 3.

<sup>8</sup> Ex. 3, p. 4.

<sup>9</sup> Ex. 3, p. 4.

<sup>10</sup> Ex. 3, p. 5.

<sup>11</sup> Ex. 3, p. 5.

<sup>12</sup> *Id.* For 2015, CSSD also reviewed the case to determine whether the support amount should stay the same or whether a material change in circumstances had occurred, and found that the obligation was the same.

<sup>13</sup> Ex. 3, pp. 15-16.

<sup>14</sup> Ex. 4.

<sup>15</sup> *Id.*

statement indicating he had been out of work since November 2014 and wanted CSSD to “recalculate [his] child support amount for this year.”<sup>16</sup>

Mr. Z checked the box on the Request for Administrative Review form requesting that CSSD conduct its administrative review of the Order “by correspondence/writing only.”<sup>17</sup> Upon receipt of his request, CSSD requested that Mr. Z provide documents in support of this request, and gave him one month to do so.<sup>18</sup> Mr. Z did not submit further documentation.<sup>19</sup> On July 14, 2015, CSSD issued an Administrative Review Decision affirming the March 2015 Order because Mr. Z had not provided documentation to support his requested review.<sup>20</sup>

On August 12, 2015, Mr. Z appealed.<sup>21</sup> Mr. Z’s written appeal request states he has been unemployed since August 2014, lives with his two sons and his retired parents, and is currently looking for work.<sup>22</sup>

#### **B. Procedural History**

Mr. Z’s appeal was referred to the Office of Administrative Hearings, and a hearing was scheduled for September 17, 2015. Both parents were notified of the hearing date by certified mail. The OAH received back from the postal service a signed “green card” for each parent, reflecting that both parents had received the notice of hearing.

The hearing was convened on September 17, 2015. Child Support Specialist Joseph West represented CSSD. Neither parent appeared for the hearing, and neither was able to be reached by telephone. Mr. Z did not answer his phone, and did not respond to a voice mail message left for him immediately prior to the start of the hearing. The phone number for Ms. E was disconnected. Because both parents had received proper notice of the hearing, and pursuant to 15 AAC 05.030(j), the hearing proceeded.

Following the hearing, the record was left open for ten days pursuant to 15 AAC 05.030(j). Neither parent contacted the OAH during that time. The record closed and this decision follows.

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<sup>16</sup> Ex. 4, p. 2.

<sup>17</sup> Ex. 4, p. 1.

<sup>18</sup> See Ex. 5.

<sup>19</sup> See Ex. 5.

<sup>20</sup> Ex. 5.

<sup>21</sup> Ex. 6.

<sup>22</sup> Ex. 6.

### III. Discussion

#### A. Applicable Law

A parent is obligated both by statute and at common law to support his or her children.<sup>23</sup> By regulation, CSSD collects support from the date public assistance was initiated on the child's behalf.<sup>24</sup> In this case, Ms. E was receiving public assistance on E's behalf by January 2014, and the arrears in the administrative order are calculated beginning on that date.<sup>25</sup> As the person who filed the appeal, Mr. Z has the burden of proving by a preponderance of the evidence that CSSD's Order is incorrect.<sup>26</sup>

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.

Total income from all sources is "the expected annual income that the parent will earn or receive when the child support award is to be paid," including salary and wages, tips, commissions, interest and dividends, and various types of public benefits.<sup>27</sup> CSSD determines a parent's total income from all sources based on a variety of sources, including:

Department of Labor and Workforce Development records, tax documents, leave and earnings statements, pay stubs, child support affidavits required by Alaska Rule of Civil Procedure 90.3(e), bank records, sworn testimony, [and] other confirmation of the parent's income that the agency determines is reliable.<sup>28</sup>

A parent who is subject to a CSSD child support order, or who receives from the Division a request for financial information, must provide the agency with financial information from which it can calculate the parent's child support obligation.<sup>29</sup> Where an obligor does not provide information about his or her income, CSSD may calculate the support obligation using an estimated or projected income based on the obligor's "actual but incomplete" information, or based on minimum wage data.<sup>30</sup>

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<sup>23</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>24</sup> 15 AAC 125.105(a)(1)-(2).

<sup>25</sup> *See Ex. 3*, p. 10.

<sup>26</sup> 15 AAC 05.030(h).

<sup>27</sup> 15 AAC 125.030(a).

<sup>28</sup> 15 AAC 125.020(a).

<sup>29</sup> 15 AAC 125.040.

<sup>30</sup> *See* 15 AAC 125.050(c)(3); 15 AAC 125.050(d).

In calculating arrears, CSSD must use the obligor's actual income.<sup>31</sup> If CSSD has only limited information concerning total income for a given year, it

[W]ill estimate the parent's total income for that year 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 or previously resided.<sup>32</sup>

If CSSD has no information concerning the parent's total income in a past year, it bases its support calculation on average annual wage income statistics provided by the Alaska Department of Labor and Workforce Development, if the parent resides in this state,<sup>33</sup> or on the greater of either the federal minimum wage or the minimum wage where the parent resides outside of Alaska.<sup>34</sup>

### **B. Calculation of Arrears from January 1, 2014 – March 31, 2015**

Unless CSSD has determined that a parent is “voluntarily unemployed or underemployed,” the child support calculation used to set arrears must be based “on the parent's actual total income for the period for which support is being calculated.”<sup>35</sup> The March 2015 Order sets \$2,910 in arrears for the period of January 1, 2014 through March 31, 2015.

#### *1. Arrears for January 1, 2014 – December 31, 2014*

For both 2014 and 2015, CSSD based Mr. Z's monthly child support obligation on a minimum wage income of \$18,720.<sup>36</sup> If CSSD had no income information for Mr. Z for 2014, minimum wage data would have been the appropriate source of total income for the arrears calculation under 15 AAC 125.050(b)(3)(B).<sup>37</sup> For 2014, however, CSSD did have at least *some* actual income information for Mr. Z. Specifically, according to Exhibit 7, the Department of Labor and Workforce Development database shows \$4,157 in employer-reported earnings for Mr. Z for the third quarter of 2014.<sup>38</sup>

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<sup>31</sup> 15 AAC 125.050(b).  
<sup>32</sup> 15 AAC 125.050(b)(2).  
<sup>33</sup> 15 AAC 125.050(b)(3)(A).  
<sup>34</sup> 15 AAC 125.050(b)(3)(B).  
<sup>35</sup> 15 AAC 125.050(b).  
<sup>36</sup> Ex. 3, p. 5.  
<sup>37</sup> 15 AAC 125.050(b)(3)(B).  
<sup>38</sup> Ex. 7.

Once CSSD had some income data for 2014, it could not set his child support obligation for that year based on minimum wage data.<sup>39</sup> It could, however, conclude that the available data represented only “limited information concerning [Mr. Z’s] actual total income for that year.”<sup>40</sup> In that case, the regulations direct CSSD to “estimate the parent’s total income for that year 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 or previously resided[.]”<sup>41</sup>

Here, the evidence supports the conclusion that the available information for 2014 does not provide a complete summary of Mr. Z’s actual total income for that year. The only available documentation of income for 2014 is one quarter of data from the Alaska Department of Labor and Workforce Development database. Of note, however, that same database does not show Mr. Z’s complete income information for 2012 or 2013. For both of those years, the total wage amounts reported to the Department of Labor by Mr. Z’s employers are significantly lower than the income amounts in Mr. Z’s tax records.<sup>42</sup> Mr. Z’s W-2 shows earnings of \$17,664 in 2012, but the database shows total annual earnings of only \$8,392.<sup>43</sup> Mr. Z’s W-2 shows earnings of \$20,424 in 2013, but the database shows only \$10,700.<sup>44</sup> It is thus more likely than not that the information reported for 2014 likewise represents less-than-complete information about Mr. Z’s actual income for 2014. Under those circumstances, it is appropriate to determine Mr. Z’s total income based on, *inter alia*, his earnings in prior years.<sup>45</sup>

While this was not the method employed by CSSD to calculate the 2014 support obligation, an analysis of Mr. Z’s earnings history supports the income amount ultimately used by CSSD. Extrapolating Mr. Z’s single quarter of reported 2014 income (\$4,157) across all four quarters would yield an annual income of \$16,628, which is \$1,642 lower than the amount CSSD used.<sup>46</sup> But the regulations direct CSSD to consider Mr. Z’s prior

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<sup>39</sup> See 15 AAC 125.050(b)(3).

<sup>40</sup> See 15 AAC 125.050(b)(2).

<sup>41</sup> *Id.*

<sup>42</sup> Compare Ex. 2, pp. 1-3 with Ex. 7.

<sup>43</sup> Ex. 2, pp. 1-3.

<sup>44</sup> Ex. 2, pp. 1-3.

<sup>45</sup> 15 AAC 125.050(b)(2).

<sup>46</sup> Again applying the same allowable deductions as CSSD applied in its March 2015 calculation, this taxable gross income amount produces a child support obligation of \$165 per month. <http://webapp.state.ak.us/cssd/guidelinescalc> (last visited October 5, 2015).

years' earnings in estimating his 2014 total income.<sup>47</sup> In the two years immediately preceding 2014, Mr. Z earned \$17,664 one year and \$20,424 the next.<sup>48</sup> The average of Mr. Z's earnings over the two previous years is \$19,044 (\$324 higher than the \$18,720 amount used by CSSD).<sup>49</sup> Similarly, averaging Mr. Z's last four quarters of employer-reported income would yield an annual income of \$19,617 – again, slightly higher than the amount used by CSSD.<sup>50</sup> Under these circumstances, the amount used by CSSD is a reasonable estimate of Mr. Z's 2014 income. Mr. Z did not meet his burden of showing that the arrears calculated for 2014 are in error.

2. *Arrears for January 1, 2015 – March 31, 2015*

CSSD's Order also sets arrears for the first three months of 2015. CSSD used the same calculation as for 2014, again setting Mr. Z's monthly child support obligation at \$194 per month based on a minimum wage income (\$18,720).<sup>51</sup> Because CSSD had no income information for Mr. Z for 2015, it appropriately followed its regulations by setting his support obligation for past due support based on the minimum wage where Mr. Z was located.<sup>52</sup> Mr. Z did not meet his burden of proving that the March 2015 Order is incorrect as to the 2015 arrears.

**C. Calculation of Ongoing Monthly Support Obligation**

CSSD calculates a parent's ongoing support obligation based on "the total annual income that the parent is likely to earn or receive when the child support is to be paid."<sup>53</sup> CSSD's regulations direct to determine the parent's expected annual income using "the best available information," including, where available, year-to-date income information, partial wage information, wage rates at previous jobs, jobs skills and history, average wage information, the local minimum wage, and any known limitations on the parent's ability to work.<sup>54</sup> If CSSD has no information about a parent's expected annual income, and the

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<sup>47</sup> 15 AAC 125.050(b)(2).

<sup>48</sup> Ex. 2, pp. 1-3.

<sup>49</sup> According to CSSD's online child support calculator, after applying the same allowable deductions as in CSSD's March 2015 calculation, this taxable gross income amount produces a child support obligation of \$198 per month. <http://webapp.state.ak.us/cssd/guidelinescale> (last visited October 5, 2015).

<sup>50</sup> After all the same allowable deductions as CSSD applied in its March 2015 calculation, this taxable gross income amount produces a child support obligation of \$206 per month.

<sup>51</sup> Ex. 3, p. 5.

<sup>52</sup> See 15 AAC 125.050 (b)(3).

<sup>53</sup> 15 AAC 125.050(c).

<sup>54</sup> See 15 AAC 125.050(c)(1)-(9).

parent lives out of state, the regulations direct it to set the support amount based on the minimum wage.<sup>55</sup>

Here, CSSD had some information about Mr. Z's expected annual income – namely, his annual income in 2012 and 2013 – and no information about any physical or other restrictions on his ability to work. CSSD's use of a support calculation based on the minimum wage where Mr. Z resides was consistent with its regulations.<sup>56</sup> Mr. Z's recent earnings history – \$17,664 in 2012 and \$20,424 in 2013 – further substantiates the reasonableness of the \$18,720 income amount used.<sup>57</sup>

Mr. Z did not submit evidence that by a preponderance of the evidence proves that this income figure was incorrect. In failing to participate in the hearing, Mr. Z did not provide any testimony or other evidence about his ability to pay child support as provided in the March 2015 Order.<sup>58</sup> In written submissions to CSSD, Mr. Z has stated that he has been unemployed since either August 2014 or November 2014.<sup>59</sup> Mr. Z's failure to participate at the hearing prevented him from resolving the discrepancy between his prior statements about his employment situation, and, significantly, from explaining the nature of, and reason for, any period of unemployment.<sup>60</sup> In the absence of such evidence, Mr. Z did not meet his burden of proving by a preponderance of the evidence that the March 2015 Administrative Child Support and Medical Support Order was incorrect.

If Mr. Z wishes to seek a modification of his support amount going forward, he is entitled to do so. But, in failing to participate in his appeal, he has not proven that the initial order is incorrect.

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<sup>55</sup> See 15 AAC 125.050(d).

<sup>56</sup> Ex. 3, p. 5; 15 AAC 125.050(c)(8), (c)(9).

<sup>57</sup> Ex. 2, pp. 1-3; 15 AAC 125.050(c)(4).

<sup>58</sup> The obligor parent has the burden of proving his or her earning capacity. *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

<sup>59</sup> Compare Ex. 4, p. 2 (Mr. Z's April 2015 request for administrative review, stating he has been unemployed since November 2014) with Ex. 6 (Mr. Z's August 2015 appeal, stating he has been unemployed since August 2014).

<sup>60</sup> Under Alaska law, unemployment is generally considered a temporary circumstance that does not warrant downward modification of a parent's child support obligation. See generally, *Patch v. Patch*, 760 P.2d 526 (Alaska 1988). Mr. Z's failure to participate in the hearing precluded any evidence being taken on whether Mr. Z's situation would warrant finding otherwise in his case.



**IV. Conclusion**

Mr. Z did not prove that the March 27, 2015 Administrative Child Support and Medical Support Order is incorrect. This Decision does not preclude Mr. Z from seeking modification of that Order in the future.

**V. Child Support Order**

All terms of the Administrative Child Support and Medical Support Order dated March 27, 2015 remain in full force and effect.

Dated: October 6, 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 21st day of October, 2015.

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

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