

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

In the Matter of:)	
)	OAH No. 16-0393-CSS
T R. D)	CSSD No. 001210098
_____)	

DECISION AND ORDER

I. Introduction

T D appeals an Administrative Hearing Decision and Amended Administrative Child and Medical Support Order issued by the Child Support Services Division (CSSD) on March 14, 2016. The order established Mr. D’s support obligation for his daughter O at \$1047 per month, effective April 1, 2016, and it set total arrears of \$7581 for past support due from August 2015 through March 2016.

Based on the record and after careful consideration, Mr. D’s child support should be adjusted to \$817 per month for August 2015 through December 2015, and \$682 per month for January 2016 and ongoing.

II. Facts

*A. Material Facts*¹

T and U D are the parents of O, who is 8. The parties were married when O was born, and Mr. D’s name is on O’s birth certificate.² Paternity is not contested. The Ds divorced in January 2013.³ O lives with Ms. D in Pennsylvania. In addition to O, Mr. D has two older sons from a prior relationship. Those children are 17 and 18 years old. At the time of the May 2016 hearing, both were still in high school. Mr. D pays ongoing child support of \$354.06 per month for his sons.⁴

Mr. D is a military veteran. He worked as a mechanic in the military and earned \$33,000 per year. After he left the military, he worked as a remote security officer on Alaska’s North Slope, as part of a transition from military to civilian work. In 2015, Mr. D earned \$52,338.96

¹ The material facts are based on Mr. D’s hearing testimony, unless otherwise cited.
² See CSSD pre-hearing brief at 1; Exhibit 1 at 9 (paternity established by conclusive marital presumption).
³ Exhibit 1, p. 9.
⁴ Exhibit 11.

from this work.⁵ His hourly pay was \$18.76, and he worked 2 week rotations of 87.5 hours per week, followed by two weeks off.⁶ Based on this information, including overtime pay, Mr. D earned roughly \$12,522.30 from this job between January 1 and March 20, 2016.⁷ The job was a temporary position, and it was phased out on March 20, 2016.

As of the May 2016 hearing, Mr. D received a \$1642 monthly pension from the Department of Veteran's Affairs. He has received this benefit since June 2015, and he will continue to receive it indefinitely.⁸ However, he expected his pension to decrease by \$100 per month in June 2016, after his oldest son graduates from high school. Effective June 2016, that pension will be \$1542 per month.

Since April 2016, Mr. D has received unemployment income of \$370 per week. He continued to receive this income as of the June 15, 2016 supplemental hearing. His unemployment benefits are authorized for 24 weeks, with maximum potential benefits of \$8880.⁹

Mr. D plans to return to school in August 2016. He has registered for a bachelor's degree program, and he intends to study respiratory therapy. Once he is in school, Mr. D will receive a monthly housing benefit of \$1327 through the "G.I. Bill;" however, he will not receive this benefit for time periods in which school is not in session, such as holiday or intersession breaks. His G.I. Bill benefits also provide an education allotment that will separately cover tuition expenses. Mr. D estimates that it will take him four, possibly five, years to finish school and graduate with his bachelor's degree. Once he graduates, he expects to earn a starting salary of roughly \$40,000 per year.

At present, Mr. D is unemployed. He is looking for employment that will accommodate his upcoming school schedule. He intends to find work in the security or sales industries, where he is likely to start at the minimum wage of \$8.25 per hour. While he is in school, he plans to work part-time.

⁵ Exhibit 9.

⁶ Exhibit 3, p. 2.

⁷ $\$18.76 \times 40 \text{ hours} \times 6 \text{ weeks}$, plus overtime pay of $\$28.14 \times 47.5 \text{ hours} \times 6 \text{ weeks} = \$12,522.30$

⁸ Exhibit 6.

⁹ Exhibit 14 (AK Dep't of Labor Determination for Unemployment Ins. Claim, dated 4/12/16).

B. Procedural Background

On August 31, 2015, CSSD received a request from the State of Pennsylvania to establish Mr. D's child support obligation for O, since public assistance benefits were being paid on her behalf.¹⁰ CSSD served the parties with an Order to Provide Financial and Medical Information.¹¹ Neither of the parties provided responsive financial information. However, CSSD received some income information from Mr. D's employer, who indicated that he earned hourly pay of \$18.76 while working two week rotations as a remote security officer on the North Slope.¹²

On December 1, 2015, CSSD issued an Administrative Child Support and Medical Support Order that set Mr. D's child support amount for O at \$682 per month, effective January 1, 2016.¹³ It also set total arrears of \$3410 for August through December 2015, based on the same monthly support obligation.¹⁴ CSSD calculated this support obligation by annualizing Mr. D's wage income from the first three quarters of 2015, plus his Alaska PFD. This resulted in gross income of \$50,825.32.¹⁵ Mr. D was served with the child support order on January 4, 2016.¹⁶

On January 19, 2016, Mr. D requested an administrative review.¹⁷ He claimed that he could not afford child support of \$682 per month, in part because he had to pay to fly from his home in Las Vegas, Nevada, to Anchorage every month to get to his job on the North Slope. He also indicated that his North Slope remote security officer job was a temporary position, which he expected to end in May 2016. He further claimed that he earned \$1400 a week, and \$33,600 per year.¹⁸ He did not disclose his military pension income. After his North Slope position ended and he went back to school, Mr. D stated that his only income would be a veteran's school program housing allowance of \$1347 per month.¹⁹

¹⁰ Exhibit 1.

¹¹ Exhibit 2.

¹² Exhibit 3.

¹³ Exhibit 4.

¹⁴ Exhibit 4, p. 8.

¹⁵ Exhibit 4, p. 9.

¹⁶ Exhibit 4, p. 14.

¹⁷ Exhibit 5.

¹⁸ Exhibit 5, p. 2.

¹⁹ Mr. D also requested adjustment of his arrears to reflect direct child support payments he had made to Ms. D since August 2015. At the hearing, he indicated an intention to resolve this issue separately.

The Administrative Review Hearing took place on February 18, 2016.²⁰ After the hearing, CSSD contacted Mr. D to clarify his military experience. Mr. D indicated that he was in the U.S. Army for 10 years, and he discharged in 2015 at the rank of E-5. He further stated that he was not collecting military retirement or disability payments, though he stated that a disability claim was currently under review.²¹ CSSD later learned that the Department of Veteran's Affairs had paid Mr. D a monthly benefit of \$1642 since June 1, 2015.²²

On March 14, 2016, CSSD issued an Administrative Hearing Decision and Amended Administrative Child and Medical Support Order, which set Mr. D's ongoing monthly obligation at \$1047 per month for one child, effective April 1, 2016.²³ It set total arrears of \$7581 for the period from August 2015 through March 2016. CSSD calculated Mr. D's 2015 total income based on his employer's reported 2015 wages of \$52,338.96, plus his VA pension from June through December 2015.²⁴ It calculated his expected 2016 total income based on his VA pension, plus expected wages of \$54,263.30.²⁵

Mr. D appealed.²⁶ He stated that he was no longer employed, and he had applied for unemployment benefits. Prior to the formal hearing, CSSD prepared a summary of Mr. D's wages, as reported by his employer to the Alaska Department of Labor and Workforce Development. It showed that he earned \$52,338.96 from NANA Management Services in 2015.²⁷ Mr. D submitted a payment history on his older two children's cases, showing that he has regularly made support payments of \$354.06 pursuant to a child support order for his sons.²⁸ He also submitted an Alaska Department of Labor unemployment eligibility determination, finding that he is eligible for unemployment benefits of \$370 per week for 24 weeks.²⁹

The formal hearing took place in two sessions, on May 4 and June 15, 2016. Mr. D appeared by telephone, as did custodial parent U D. Child Support Specialist Kimberly

²⁰ Exhibit 7 at 1.

²¹ Exhibit 7, pp. 1-3.

²² Exhibit 6.

²³ Exhibit 7.

²⁴ Exhibit 7, p. 10.

²⁵ Exhibit 7, p. 11. CSSD calculated Mr. D's expected 2016 wages based on the income he earned as a remote security officer on the North Slope.

²⁶ Exhibit 8.

²⁷ Exhibit 9.

²⁸ Exhibit 11.

²⁹ Exhibit 14.

Sledgister represented CSSD. The hearing was audio-recorded. The record closed on June 15, 2016.

III. Discussion

Mr. D filed the appeal in this matter, so he has the burden of proving by a preponderance of the evidence that CSSD's March 14, 2016 Amended Administrative Child and Medical Support Order is incorrect.³⁰

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.³¹ Alaska Civil Rule 90.3(a) provides the formula used to calculate child support awards. The Commentary to Civil Rule 90.3 explains that the rule is designed to approximate the amount a non-custodial parent would have spent on the child if the family was intact. It operates on the principal that, as the income available to both parents increases, the amount available to support the child also will increase.³²

By regulation, CSSD collects support from the date the custodial parent requested child support services or the date public assistance was initiated on behalf of the child.³³ In this case, public assistance was initiated on O's behalf in August 2015, so that is the first month in which Mr. D is obligated to pay support.

Civil Rule 90.3(a)(1) bases an obligor's child support determination on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security.³⁴ The rule also allows a deduction for child support payments made on behalf of older children, sometimes referenced as "prior children," if that support is required by court or administrative order and actually paid, as it is in this case.³⁵

The obligor-parent has the burden of proving his or her earning capacity.³⁶ For 2015, Mr. D's total income from all sources can be calculated from his actual income. This includes wages of \$52,338.96, plus his V.A. pension from June through December 2015, for total income of

³⁰ 15 AAC 05.030(h).

³¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

³² Civil Rule 90.3, Commentary, II.

³³ 15 AAC 125.105(a)(1)-(2).

³⁴ Civil Rule 90.3(a); *see also Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).

³⁵ Civil Rule 90.3(a)(1)(C).

³⁶ *Kowalski*, 806 P.2d at 1372.

\$63,832.96.³⁷ After deductions for matters such as federal taxes, social security, and Mr. D's child support obligation to his older children, this income results in a monthly child support obligation of \$817 for one child.³⁸

The determination of Mr. D's expected income in 2016 is more difficult, because the calculation includes his likely income over the course of the year.³⁹ In 2016, it is clear that Mr. D will receive a VA pension totaling \$19,004.⁴⁰ He also earned wages of \$12,522.30 from his North Slope position through March 20, 2016. Due to either lack of effort or lack of success in obtaining a new job in Las Vegas, it appears that he will receive 24 weeks of unemployment benefits, or \$8880, from April through September 2016. This amount is comparable to the income Mr. D would have earned if he had worked a full-time, minimum wage job during this time.⁴¹ Beginning in August 2016, Mr. D will receive a \$1327 monthly housing allowance while he is in school.⁴² The fall semester is generally four months long, from mid-August to mid-December, so Mr. D's housing allowance should be approximately \$5280 through the end of the year.⁴³ He also will earn income from a part-time job, for which it is reasonable to expect that he could work at least 20 hours per week, beginning October 1, 2016, at the minimum wage of \$8.25 per hour. Through the end of the year, this work is likely to result in gross wages of \$2145.⁴⁴

All of the above income sources result in expected total 2016 income of \$47,831.30. After allowable deductions for federal taxes, Social Security, and Mr. D's support obligation for his older children, this income results in a monthly support amount of \$682 for O.⁴⁵ This calculation is based on the best available evidence of Mr. D's likely income at this time. If it

³⁷ \$1642 x 7 months = \$11,494. \$11,494 V.A. pension + \$52,338.96 wages = \$63,832.96.

³⁸ Exhibit 12.

³⁹ Civil Rule 90.3, Commentary III.E.

⁴⁰ (\$1642 x 5 months) + (\$1542 x 7 months) = \$19,004.

⁴¹ If he had not received unemployment income, the undersigned would conclude that Mr. D has been voluntarily and unreasonably unemployed since he lost his North Slope job. He testified that he has made some efforts to find part-time work that will accommodate his anticipated school schedule. His search has been quite selective for this reason, and he does not seem to have looked for full-time work. Absent his unemployment benefit income, it would be reasonable to expect that Mr. D could earn at least minimum wage, full-time, when he is not a full-time student.

⁴² Testimony of T D at 6/15/16 hearing.

⁴³ The housing allowance is not part of a G.I. Bill education allotment, so it is included in total income.

⁴⁴ \$8.25 x 20 hrs x 13 weeks = \$2145.

⁴⁵ See Attachment A (child support calculation from <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

becomes apparent that Mr. D's total income is significantly higher or lower than anticipated, either party may move to modify his obligation at a later time.⁴⁶

After the May 2016 hearing, CSSD proposed two alternatives for calculating Mr. D's 2016 support obligation. The first assumed that he could continue working at his North Slope salary. However, the evidence in the record is that Mr. D's former position was temporary, and it was terminated. There is no evidence that a similar position remains available to him. CSSD's second proposal omitted several income sources, and it understated his likely total income.⁴⁷

CSSD's proposed support calculations did not make any allowance for Mr. D's plans to enroll as a full-time student in August 2016. This is because CSSD was not convinced that Mr. D will, in fact, enroll in a degree program as a full-time student in August.⁴⁸ However, Mr. D is in a period of transition between jobs and careers, and his representation regarding his school plans is supported by his conduct. He has enrolled and set up his veteran's educational benefits.

Civil Rule 90.3 recognizes that, when a parent makes a career change, the extent to which the child will ultimately benefit must be considered.⁴⁹ In this case, the evidence is that Mr. D did not leave his North Slope job voluntarily. He has not yet found work in Las Vegas. He has skills as a mechanic, for which he earned \$33,000 in the military. His other employment opportunities, for instance as an entry level security guard in Las Vegas, are likely to pay less well. Viewed from this perspective, Mr. D's return to school to earn a bachelor's degree is likely to benefit O in the long-term, assuming that Mr. D completes the degree in a disciplined and timely manner. Once he graduates, he expects a starting salary of \$40,000 as well as more stable and predictable employment opportunities. A bachelor's degree should generally improve Mr. D's future employment and income prospects. Even as a student, Mr. D will have significant non-wage sources of income. And, while a student, he can continue to generate some income by working at a half-time job. For these reasons, his support amount will not be dramatically reduced solely because of his decision to change career paths. Based on the totality of these circumstances, Mr. D's decision to return to school does not render him voluntarily and

⁴⁶ Similarly, a modification may be appropriate when Mr. D's older child emancipates, and Mr. D's support obligation for his prior children is reduced.

⁴⁷ Exhibit 13. This calculation did not include Mr. D's 2016 North Slope income, three months of his V.A. pension, or his likely school housing allowance benefits.

⁴⁸ CSSD representation at 6/15/16 hearing.

⁴⁹ Civil Rule 90.3, Commentary III.C. *See also Pattee v. Pattee*, 744 P.2d 658 (Alaska 1987).

unreasonably underemployed. Therefore, it is not necessary to impute any additional wage income to him.

B. Credit for Direct Payments Made

Mr. D's appeal letter requested a credit against his arrears balance for support payments he previously made directly to Ms. D. As discussed at the hearing, within certain constraints, CSSD may give an obligor credit for direct payments made to the child or the child's custodian "before the time the obligor is ordered to make payments through the agency," so long as the direct payments were not made before the first date support is due in the administrative child support action.⁵⁰ An obligor who requests such credit must prove by clear and convincing evidence that he or she actually made the payments and that both parties intended the payment to be a direct payment of child support.⁵¹ However, if the arrears have been assigned to a state entity because of public assistance paid on the child's behalf, there are limits on the availability of direct payment credits.⁵²

In this case, CSSD can administratively adjust Mr. D's arrears as appropriate once it receives more information about the direct payments he has made. That information is not in the record, and no determination can be made in this decision.

IV. Conclusion

Mr. D met his burden to show that CSSD's March 14, 2016 Amended Administrative Child and Medical Support Order was incorrect. Based on the information provided in the hearing process, his child support obligation for O is set based on his actual 2015 income and the best available information regarding his expected 2016 income. It also includes a deduction for the child support Mr. D pays for his two older boys. Mr. D's child support for O is correctly calculated under Civil Rule 90.3(a) at \$817 per month for August through December 2015, and at \$682 per month for January 2016 and ongoing. No variance under Civil Rule 90.3(c) was requested or granted.

V. Child Support Order

- Mr. D is liable for child support for O in the amount of \$817 per month for August through December 2015, and \$682 per month for January 2016 and ongoing;

⁵⁰ AS 25.27.020(b); *see also* 15 AAC 125.465(a).

⁵¹ 15 AAC 125.465(a).

⁵² *See* 15 AAC 125.465(f).

- All other provisions of the Amended Administrative Child and Medical Support Order dated March 14, 2016 remain in full force and effect.

DATED this 27th day of June, 2016.

Signed

Kathryn A. Swiderski
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 13th day of July, 2016.

By: Signed

Signature
Lawrence A. Pederson

Name
Administrative Law Judge

Title

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