

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

In the Matter of	)	
	)	
K F. D	)	OAH No. 16-0935-CSS
_____	)	Agency No. 001192227

**DECISION AND ORDER**

**I. Introduction**

This case is Z J. B W’s appeal of an order issued by the Alaska Child Support Services Division (Division). That order established K D’s child support obligation for his child, M. On August 29, 2016, a formal hearing was held on Mr. D’s appeal.<sup>1</sup> Ms. W, the custodial parent, participated in the hearing and was represented by her attorney, Terri Bird. Mr. D also participated. There was a Spanish translator for the hearing. Kimberly Sledgister, Child Support Specialist, represented the Division. Two post hearing orders were issued and the Division and Mr. D filed post hearing submissions. The hearing was audio-recorded. The record closed on September 30, 2016.

Having reviewed the record in this case, and after due deliberation, the Administrative Law Judge concludes that the Division’s Amended Administrative Child and Medical Support Order should be adjusted to set child support for arrears and ongoing in accordance with the Division’s latest primary and shared custody calculations. This means that Mr. D’s monthly child support obligation is \$755 for December of 2015, through April of 2016, when Ms. W had primary custody; and \$606 per month ongoing based on shared custody.

**II. Facts**

The Division established a child support order for Mr. D’s child, M, because M began receiving grants of public assistance in December of 2015.<sup>2</sup> Paternity is not in dispute.<sup>3</sup>

The Division issued an Administrative Child and Medical Support Order on April 25, 2016.<sup>4</sup> Mr. D appealed his child support order.<sup>5</sup>

The Division issued an Amended Administrative Child and Medical Support Order

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170.  
<sup>2</sup> Exhibit 8, page 14 & Recording of Hearing.  
<sup>3</sup> Recording of Hearing.  
<sup>4</sup> Exhibit 4.  
<sup>5</sup> Exhibit 5.

issued on July 8, 2016. In that Amended Administrative Child and Medical Support Order, the Division had set Mr. D's monthly child support at \$360 monthly for January through April of 2016 and shared custody ongoing child support at \$213 per month starting in May of 2016. The order also established monthly arrears in the amount of \$350 for December of 2015. The ongoing amounts were based on 35/65 shared custody calculations, with Ms. W having custody for 65% of the overnights. The calculations used the parents' estimated incomes.<sup>6</sup> Mr. D requested a formal hearing.<sup>7</sup>

Mr. D owns his own cleaning business and also does painting jobs on the side. Ms. W argued persuasively that the Division's calculations underestimated Mr. D's actual income. Ms. W has worked for Mr. D in the past and was familiar with his personal use of the vehicles that he claims as a business expense and his unreported earnings.<sup>8</sup>

After the hearing, Mr. D was ordered to file documentation of his 2015 vehicle expenses for his truck to the Division. Mr. D did provide those documents to the Division. The Division was ordered to recalculate Mr. D's child support obligation adding \$12,500 in untaxed unreported annual income, and reducing his vehicle deduction to exclude; any deduction for his car, because he uses this for personal use, any accelerated depreciation; and any other unreasonable or undocumented vehicle expense. The Division was also ordered to submit a second calculation disallowing one-half of his total \$19,637 vehicle expense deduction, that is, \$9,818.5, and adding \$12,500 in untaxed unreported annual income.

After the hearing, the Division filed new calculations, as ordered. In the calculations at exhibit 14, the Division reviewed Mr. D's 2015 Income Tax Return and supporting documentation and receipts to calculate the monthly child support obligation. For this calculation, the Division used Mr. D's employer reported wages of \$483.00 plus self-employment income of \$28,561.00. CSSD included \$12,500 in untaxed unreported annual income.<sup>9</sup>

After reviewing the documentation Mr. D provided after the hearing regarding his vehicle used for business, the Division excluded \$14,887.98 of the \$19,367.00 that he had claimed as car and truck expenses on his 2015 Income Tax Return. The Division did not allow several

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<sup>6</sup> Exhibit 8.

<sup>7</sup> Exhibit 9.

<sup>8</sup> Recording of Hearing & Exhibit 6.

<sup>9</sup> Division's Submission to Record & Exhibit 14.

deductions because the Division determined that these deductions should not be considered for the ongoing child support calculation. Of Mr. D's claimed vehicle repair deductions, a total of \$11,266.34 was determined to be extraordinary and unusual circumstances.<sup>10</sup>

The Division also excluded deductions purchases from AutoZone and O'Reilly Auto Parts totaling \$133.95, which were determined to be unnecessary and not related to business practices or were related to Mr. D's vehicle used for personal use. The Division also excluded auto-loan payments of \$2,536.04 because they were payments made towards consumer debt. The Division did allow a deduction for gasoline in the amount of \$3,696.61 or oil changes in the amount of \$159.16.<sup>11</sup>

The total excluded deductions of \$14,887.98 were added to Mr. D's self-employment income for total earnings of \$43,448.98. Mr. D's total annual earnings after removing these deductions was \$56,431.98, which includes his employer reported wages, self-employment income and untaxed unreported income.<sup>12</sup>

The 2015 Division's child support calculation for December of 2015 is based on Ms. W having primary custody and using Mr. D's earnings of \$56,431.98. Mr. D was given credit for two older children that live with him 50% of the time. The calculation results in a monthly support obligation of \$755.00 for one dependent.<sup>13</sup>

The Division's 2016 and ongoing child support calculations were based on primary custody for January through April 2016 and shared custody May 1, 2016 forward. M is with Mr. D 35% of the time and Ms. B W 65% of the time. The calculation is based on Mr. D's annual wage of \$56,431.98. Mr. D was given credit for two older children that live with him 50% of the time. These calculations result in a monthly support obligation of \$755.00 for primary custody and \$606.00 for shared custody<sup>14</sup>

The Division's 2016 income shared custody calculation at Exhibit 14 is based on Ms. W's estimated annual income of \$16,735.73, using her last four quarters of employer-reported earnings of \$15,713.73, plus an Alaska PFD of \$1,022. This calculation results in a monthly

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<sup>10</sup> Division's Submission to Record & Exhibits 13 & 14.

<sup>11</sup> Division's Submission to Record & Exhibits 13.

<sup>12</sup> Division's Submission to Record & Exhibits 13 & 14.

<sup>13</sup> Division's Submission to Record & Exhibit 14 pages 1 & 2.

<sup>14</sup> Division's Submission to Record & Exhibit 14 pages 3 through 6.

support obligation of \$247.00 for one dependent.<sup>15</sup>

The Division submitted a second calculation, at Exhibit 15, disallowing one-half of Mr. D's total vehicle expense deduction as listed on his 2015 Income Tax Return. The claimed deduction of \$19,637 divided by 50% equals \$9,818.50 and adds \$12,500 in untaxed unreported annual income. The Division included Mr. D's employer reported wages of \$483 and self-employment income of \$28,561.00 to the calculation.<sup>16</sup>

This December 2015 child support calculation using this income is based on primary custody and Mr. D's annual earnings of \$51,362.50. Mr. D was given credit for two older children that live with him 50% of the time. This calculation results in a monthly support obligation of \$682.<sup>17</sup>

This 2016 child support calculation at Exhibit 15 is based on primary custody for January through April 2016 and shared custody May 1, 2016 forward. M is with Mr. D 35% of the time and Ms. B W 65% of the time in the shared custody calculation. This calculation is based on Mr. D's annual wage of \$51,362.50. Mr. D was given credit for two older children that live with him 50% of the time. This share custody calculation uses Ms. W's last four quarters of employer reported earnings of \$15,713.73 and the 2016 Alaska PFD of \$1,022.00. Ms. W's total annual income is \$16,735.73. This calculation results in a monthly support obligation of \$682.00 for primary custody and \$535.00 for shared custody.<sup>18</sup>

Based on the evidence in the record, it is more likely than not that the Division's latest calculations at exhibit 14 are correct and that the income amounts used in these calculations are the best estimates of Mr. D's and Ms. W's ongoing annual income and earning capacity.<sup>19</sup> These calculations also use a correct shared custody calculation based on Mr. D having 35% custody. These calculations show Mr. D's monthly child support obligation should be set \$755 for December of 2015 through April 2016, when Ms. W had primary custody; and \$606 per month for May 2016 and ongoing, based on shared custody.<sup>20</sup>

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<sup>15</sup> Division's Submission to Record & Exhibit 14 pages 5 & 6.

<sup>16</sup> Division's Submission to Record & Exhibits 5 & 15.

<sup>17</sup> Division's Submission to Record & Exhibit 15, pages 1 & 2.

<sup>18</sup> Division's Submission to Record & Exhibit 15, page 6.

<sup>19</sup> Recording of Hearing & Exhibit 13.

<sup>20</sup> Recording of Hearing, Division's Submission to Record & Exhibits 13 & 14.

### **III. Discussion**

#### **Burden of Proof**

Ms. W argued that Mr. D's child support order should be higher than the amount set by the Division. In a child support hearing, the person who filed the appeal, in this case, Ms. W, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>21</sup> Ms. W met her burden of showing that Mr. D's child support order should be adjusted based on updated income and custody information.

#### **Shared Custody Calculation**

The evidence in the record showed that it is more likely than not that Mr. D and Ms. W share custody of M with Mr. D having M 35% of the overnights beginning in May of 2016. When calculating child support, a parent is entitled to a reduction on the monthly obligation if the parent is exercising shared custody. Shared custody exists when a child resides with a parent at least 30, but no more than 70, percent of the overnights.<sup>22</sup> Under the shared custody formula, the annual amount each parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the child. The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.<sup>23</sup>

#### **Income**

As discussed at the hearing, this order is based on primary and 35/65 shared custody calculations using estimated 2015 earnings plus a PFD as the best estimate of the parents' current annual incomes and earning capacities. Mr. D was evasive when answering questions about his earnings. The evidence in the record shows that the Division did good work reviewing the deductions that Mr. D claimed on his 2015 income tax return and that the estimate that the Division made after disallowing deductions that should not be included for the purposes of calculating his child support provided the best estimate of his income. This estimate was used in the Division's calculations at exhibit 14.

When a parent with a child support obligation makes an accurate determination of his or her income impossible, income must be imputed to calculate the child support obligation. Rather

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<sup>21</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>22</sup> Alaska Civil Rule 90.3(f).

<sup>23</sup> Alaska Civil Rule 90.3(f).

than determining the parent's actual income, the parent's earning capacity is used to estimate the parent's potential income.<sup>24</sup> Although Mr. D made it difficult to determine his actual income, the Division was able to make a reasonable estimate based on the information he provided, which is probably more accurate than the estimate used in exhibit 15. The calculations at exhibit 15 were requested in case Mr. D did not provide the ordered documentation, or the Division was unable to provide an accurate estimate of his earnings based on what he provided.

#### **IV. Conclusion**

I conclude that monthly amounts for 2015, 2016 and ongoing in the Division's order should be adjusted to use the latest primary and shared custody calculations at exhibit 14. The child support amount in this order was calculated using the shared custody formula in Alaska Civil Rule 90.3(a) & (b). \$755 for December of 2015 through April of 2016, when Ms. W had primary custody; and \$606 per month starting in May of 2016 and ongoing based on shared custody

#### **V. Child Support Order**

1. Mr. D's ongoing child support for M is set at \$606 per month based on the current shared custody arrangement and the parents' income, effective November 1, 2016.
2. Mr. D's monthly child support arrears for M are set at \$755 for December of 2015 through April 2016, when Ms. W had primary custody, and \$606 per month for the months of May 2016 through October 2016 based on the current shared custody arrangement and the parents' income.
3. The Division gave Mr. D \$1,670 in total credits for direct payments of child support made between December of 2015 and April of 2016
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for M.
5. All other provisions of the Amended Administrative Child and Medical Support Order issued on July 8, 2016 remain in effect.

DATED this 31<sup>st</sup> day of October 2016.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>24</sup> *Laybourn v. Powell*, 55 P.3d 745, 747 (Alaska 2002).

**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 16<sup>th</sup> day of November, 2016.

By: Signed  
Signature  
Stephen C. Slotnick  
Name  
Administrative Law Judge  
Title

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