

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

In the Matter of)	
)	
F D. D)	OAH No. 16-0980-CSS
_____)	Agency No. 001125127

DECISION AND ORDER

I. Introduction

Custodial parent O L appealed a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on August 12, 2016. The order modified F D’s child support obligation for the parties’ son, E, from \$452 to \$641 per month, effective July 1, 2016.

During the hearing process, Mr. D provided additional information regarding his self-employment income from his lawn care business. Now that his income from wages and self-employment have been included, Mr. D’s support obligation is properly modified to \$656 per month, effective July 1, 2061 and ongoing. This support obligation is subject to a monthly medical credit while Mr. D provides medical insurance coverage for E.

II. Facts

A. Material Facts

Mr. D and Ms. L are the parents of E, who is 15. E lives with Ms. L, so child support in this case is calculated under the primary custody formula of Civil Rule 90.3(a).

Mr. D is employed by No Name. He earns \$22.26 per hour, which translates to expected 2016 wages of \$46,300.80 for full-time work.¹ There is no dispute regarding this income. He is expected to receive the 2016 Alaska Permanent Fund Dividend (PFD).

Mr. D also owns and operates a small lawn care business, “No Name.”² Under this business name, Mr. D provides lawn care services during the summer months. He has not done this work every summer, but the business is operating during the 2016 lawn maintenance season, from May through October.³ From May through August 2016, Mr. D’s gross receipts for lawn

¹ Exhibit 6, pp. 5-6.

² Exhibit 8.

³ Testimony of Mr. D; Exhibit 10 (D summary of 2016 business income and expenses, received 9/16/16). Because the business did not operate in 2015, Mr. D could not submit a recent tax return showing past business income or expenses.

care totaled \$1545.00. He anticipated income of \$772.50 for September and October 2016. This totals gross earnings of \$2,317.50 from the lawn care business.⁴

Mr. D estimated that his net summer income would be only \$458.77, after he deducted his business expenses. He identified five expenses: (1) solid waste services, \$176.00; (2) fuel, \$440.10; (3) telephone, \$448.86; (4) supplies (fertilizer/bags/seed), \$318.88; and (5) equipment (trimmer & blower), \$474.89.⁵ Most of these expenses appear to be reasonable and they are therefore allowable. The exception is the telephone expense, which is excessive for such a small, single-operator business. The claimed expense appears to be Mr. D's combined business and personal telephone costs over the six-month time period, not the amount attributable solely to his business needs. Therefore, it is excluded as a deduction for purposes of this case. After allowable business expenses, Mr. D's expected 2016 income from his lawn care business is \$907.63.⁶

B. Procedural History

In 2006, Mr. D's child support obligation for E was set at \$452 per month.⁷ On June 21, 2016, Ms. L requested a modification review.⁸ On June 23, 2016, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁹ Mr. D did not respond. However, Mr. D's employer provided information regarding his wages and his medical insurance coverage for E.¹⁰

On August 12, 2016, CSSD issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal. Based on Mr. D's wage income and the PFD, the modified order set his ongoing child support at \$641 per month, effective July 1, 2016.¹¹ Ms. L appealed. She argued that the support calculation did not include Mr. D's self-employment income from his lawn care business.¹²

The formal hearing took place on September 12, 2016. Ms. L and Mr. D appeared telephonically and represented themselves. Each parent testified on his or her own behalf. Child

⁴ Exhibit 10.

⁵ *Id.*

⁶ $\$2,317.50 - (\$176 + \$440.10 + \$318.88 + \$474.89) = \$907.63.$

⁷ Exhibit 1.

⁸ Exhibit 2.

⁹ Exhibit 3.

¹⁰ Exhibit 5.

¹¹ Exhibit 6.

¹² Exhibit 7.

Support Specialist Kimberly Sledgister appeared telephonically and represented CSSD. The record remained open after the hearing, and Mr. D submitted a summary of his expected 2016 self-employment income and expenses.¹³ CSSD then submitted a revised child support calculation that took this income into account.¹⁴ Mr. D and Ms. L were provided an opportunity to respond to all post-hearing submissions, but neither did so. The record closed on September 28, 2016. All submitted documents were accepted into the record.

III. Discussion

The issue in this case is whether Mr. D's modified child support amount is properly based on all of his expected 2016 income.¹⁵ Because Ms. L brought this appeal, she bears the burden of proving by a preponderance of the evidence that CSSD incorrectly calculated Mr. D's support obligation.¹⁶

Civil Rule 90.3(a) provides the formula for calculating child support awards where one parent has primary physical custody. That calculation is based on the noncustodial parent's "total income from all sources," minus specified deductions such as taxes and Social Security.¹⁷ In determining total income from all sources, Civil Rule 90.3 requires an assessment of the amount the parent can be expected to earn during the period for which the support is being paid. By its nature, this is a somewhat uncertain endeavor, since the relevant calculation is expected future income.¹⁸

Civil Rule 90.3 does not have a specific formula for determining self-employment income, but the commentary to the Rule provides some guidance. It states: "Income from self-employment . . . includes the gross receipts minus the ordinary and necessary expenses required to produce the income."¹⁹ It adds that "ordinary and necessary expenses" do not include some amounts that the IRS may nonetheless allow, such as accelerated depreciation expenses, investment tax credits, or other business expenses determined by the tribunal to be inappropriate.²⁰

¹³ See Exhibit 10.

¹⁴ CSSD post-hearing submission dated 9/22/16.

¹⁵ In her hearing request, Ms. L also sought proof of the medical insurance Mr. D provides for E. Exhibit 7. In his post-hearing submission, Mr. D provided that information. Exhibit 10, p. 3.

¹⁶ 15 AAC 05.030(h); 2 AAC 64.290(e).

¹⁷ Civil Rule 90.3(a); see also *Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).

¹⁸ Civil Rule 90.3, Commentary III.E.

¹⁹ Civil Rule 90.3, Commentary III.B.

²⁰ *Id.*

For the reasons discussed previously, Mr. D's likely 2016 self-employment income is \$907.63, after allowable business expenses. This is also the amount adopted in CSSD's post-hearing proposed support calculation. When this sum is added to Mr. D's bakery wages and the PFD, it results in expected total gross income of \$48,208.43. Under the Civil Rule 90.3(a) formula, this income translates to a child support amount of \$656 per month for one child.²¹ Because Mr. D provides E with medical insurance, CSSD has applied a \$20 monthly medical credit to that amount, so Mr. D's actual monthly support obligation will be \$636.

A modification is effective beginning the first of the month after CSSD provided notice to the parties that a modification had been requested.²² In this case, CSSD provided that notice in June 2016, so this modification is effective July 1, 2016.

IV. Conclusion

Ms. L met her burden of proving that CSSD's August 12, 2016 Modified Administrative Child Support and Medical Support Order was incorrect, because the calculation did not include Mr. D's expected 2016 self-employment income. When this income is included, the Civil Rule 90.3(a) formula results in a modified support obligation of \$656 per month for one child, effective July 1, 2016. No variances were requested or granted under Civil Rule 90.3(c). CSSD will apply the appropriate medical credit as long as Mr. D provides medical insurance for E.

V. Child Support Order

- Mr. D is liable for modified child support for E in the amount of \$656 per month, effective July 1, 2016, and ongoing;
- CSSD will apply the appropriate medical credit to Mr. D's support obligation while he provides medical insurance for E;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 12, 2016, remain in full force and effect.

DATED October 7, 2016,

Signed _____
Kathryn Swiderski
Administrative Law Judge

²¹ See CSSD proposed revised support calculation, submitted 9/22/16.

²² 15 AAC 125.321(d).

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 25th day of October, 2016.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

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