

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

In the Matter of)	
)	
C J. D)	OAH No. 17-0111-CSS
_____)	Agency No. 001215202

DECISION AND ORDER

I. Introduction

C D appeals an Administrative Review Decision and Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on January 23, 2017. The amended order set Ms. D's ongoing child support obligation for her son, J, at \$87 per month, based on shared custody. It also calculated pre-order arrears totaling \$678.

Based upon the record and after careful consideration, Ms. D's child support is set at \$43.50 per month for May 2016 through December 2016, and \$43.50 per month for January 2017 and ongoing. This determination reflects the parties' 50/50 shared custody arrangement.¹

II. Facts

A. Material Facts

C D and L L are the parents of J, who is 2. The parties exercise shared custody of J on a 50/50 schedule.

Ms. D is 22 years old. She lives in Anchorage in a rented home with her boyfriend and another roommate. She is pregnant with her second child, who will be born in June 2017. She has training and job experience as a dental assistant; she formerly worked as a dental assistant at the Facility X, where she earned \$14.16 per hour.² She left that job in December 2016, because the work demanded too many hours and she wanted to focus on her health. She does not plan to return to work in the near future. In August 2017, she plans to return to school and work toward a four-year degree in early childhood education, so she can eventually get a job as a school teacher. At present, Ms. D gets by with financial help from her boyfriend and by using her savings. She also provides some childcare for her roommate in lieu of paying other household expenses.³

¹ Under Civil Rule 90.3(c)(3), child support amounts below the \$50 state minimum are permissible if calculated under the shared custody formula.

² Exhibit 2.

³ Exhibit 7.

Mr. L is approximately 24 years old.⁴ J is his only child. Mr. L lives in No Name with family. He has a high school diploma, but he has not pursued subsequent education. He is healthy and capable of full-time work, though he has not worked a traditional job since 2014-2015, when he was employed by the City of No Name.⁵ His primary job experience involves manual labor. In 2016, Mr. L's only known employment involved four months of manual labor, working for his uncle.

B. Procedural History

In May 2016, Mr. L received public assistance on J's behalf.⁶ On the application for assistance, Mr. L identified himself as J's custodial parent. CSSD was notified of the assistance, and it then took action to establish a child support order. In August 2016, CSSD issued to both parents an administrative order requiring them to provide financial and medical insurance information. It did not receive any information from either parent. However, it received responsive income information from two of Ms. D's former employers.⁷

In December 2016, CSSD issued and served on Ms. D an Administrative Child Support and Medical Support Order based on the assumption that Mr. L exercised primary physical custody of J.⁸ CSSD calculated Ms. D's ongoing support on her \$14.16 hourly wage over a full-time work schedule. Including the Alaska PFD, this income resulted in an ongoing support obligation of \$453 per month.⁹ CSSD calculated Ms. D's pre-order arrears based on her employer-reported wages during the first two quarters of 2016. This resulted in a monthly pre-order support obligation of \$123 and a total arrears calculation of \$738.¹⁰

Ms. D requested an administrative review hearing.¹¹ She argued that she and Mr. L actually exercise shared custody of J, and Mr. L had incorrectly identified himself as the custodial parent when he applied for public assistance. Mr. L agreed that the parties share custody of J.¹² He also indicated that he had closed his public assistance grant, and he did not want Ms. D to be required to pay child support.

⁴ Unless noted otherwise, the facts regarding Mr. L are based on the testimony of Ms. D.

⁵ D testimony; Exhibit 9.

⁶ CSSD pre-hearing brief, p. 1.

⁷ Exhibits 2, 3.

⁸ Exhibit 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Exhibit 5.

¹² Exhibit 6.

On January 23, 2017, CSSD issued the Administrative Review Hearing Decision and Amended Administrative Child and Medical Support Order that are the subject of this appeal.¹³ CSSD adopted the parties' agreement that they share custody equally. Following a review of each parent's actual 2016 and expected 2017 income, the order set Ms. D's 2017 and ongoing obligation for J at \$87 per month. It set her 2016 pre-order arrears at \$72 per month for the eight months from May 2016 through December 2016.¹⁴

Ms. D requested a formal administrative hearing.¹⁵ She argued that she was no longer employed, and she had no income. She also argued that the parties did not want a child support order, and Mr. L should be responsible for repaying any public assistance he received, since he had misrepresented himself as the custodial parent on his application.

The formal hearing took place by telephone on February 27, 2017. Ms. D represented herself and testified on her own behalf. Mr. L did not appear and could not be reached at his telephone number of record, so he did not participate. Child Support Specialist Kimberly Sledgister represented CSSD. The hearing was recorded. The record closed on March 3, 2017, after CSSD submitted post-hearing calculations addressing Ms. D's 2016 support obligation.

III. Discussion

In a child support matter, the person who files an appeal bears the burden of proof.¹⁶ Ms. D filed this appeal, so she must prove by a preponderance of the evidence that the January 23, 2017 Administrative Review Hearing Decision and Amended Administrative Child and Medical Support Order are incorrect.¹⁷

A. Issuance of Child Support Order

A parent is obligated both by statute and at common law to support his or her children.¹⁸ By regulation, CSSD is required to collect support from the date the custodial parent requested child support services, or the date public assistance was provided on behalf of the child.¹⁹ In this case, Mr. L

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Exhibit 7.

¹⁶ 15 AAC 05.030(h).

¹⁷ 2 AAC 64.290(e).

¹⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁹ 15 AAC 125.105(a)(1), (a)(2).

received public assistance benefits in May 2016, so that is the first month in which Ms. D is obligated to pay support through CSSD.

Ms. D argued that she should not be held responsible for repaying any public assistance Mr. L received, because he misrepresented the parties' custody arrangement and received public assistance for which he was not otherwise eligible. To the extent this claim involves an allegation of fraud, Ms. D may pursue it with the appropriate public assistance agency. However, because public assistance was provided, CSSD is obligated to issue a child support order that is based on the parties' relative incomes and earning capacities.²⁰

B. Child Support Calculations

Where parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than where one parent has primary custody. Each parent's primary custody support obligation to the other is determined based on the income figures for that parent for the year in question. The resulting figures are inserted into a shared custody formula.²¹ In general, and depending on the percentage of time each parent has overnight visitation, the parent obligated to pay child support will have a somewhat lower monthly support amount than in a primary custody scenario.

1. 2017 and ongoing calculations

Under Civil Rule 90.3, a parent's ongoing child support obligation should be based on the amount the parent can be expected to earn during the period for which the support is being paid. By its nature, this determination is a somewhat uncertain endeavor, since the relevant calculation is expected future income.²² However, when a parent is voluntarily and unreasonably unemployed or underemployed primarily as a result of his or her own choices, the child support obligation should be calculated based on the income that the parent could be expected to earn, given the parent's work history, qualifications and job opportunities.²³

In 2017, Ms. D does not expect to earn any income, since she has elected not to work for the time being, and she then plans on being a full-time student. Ms. D is healthy and capable of working,

²⁰ *Id.* If there is a determination that Mr. L is responsible for repaying the public assistance he received, the CSSD hearing representative indicated that CSSD records would be revised to reflect this fact. In that case, Ms. D's child support obligation for the months involving public assistance would be owed to Mr. L rather than to the State of Alaska.

²¹ See Exhibit 6, pp. 15-16.

²² Civil Rule 90.3, Commentary III.E.

²³ See Civil Rule 90.3(a)(4); *Kowalski v. Kowalski*, 806 P.2d 1368, 1370-71 (Alaska 1991).

and her decision not to work is primarily a lifestyle choice. As a result, she is voluntarily and unreasonably unemployed, and her 2017 income should be based on her potential income.²⁴

Ms. D is qualified and experienced as a dental assistant, and jobs in this field are available. Ms. D's last dental assistant job paid \$14.16 per hour, so that is the wage she can reasonably be expected to earn. Because Ms. D expects to have a baby in June, however, it is not reasonable to assume she could work a full-time job for twelve months of 2017. It is more reasonable to assume she could work a full-time schedule for 44 weeks of the year, allowing eight weeks of recovery and maternity leave after she has her second child. This work would result in gross wages of \$24,921.60.²⁵ This calculation does not account for Ms. D's plans to return to school full-time in August 2017, since those plans are still preliminary and she is not yet enrolled. If she does enroll, Ms. D may request a modification review to consider that change in her financial situation.

A primary custody child support calculation from the above income figure, plus the Alaska PFD (estimated at the same amount as last year), equals \$367 per month for one child.²⁶

Based on the evidence in the record, Mr. L is also voluntarily and unreasonably unemployed or underemployed at the present time. He is healthy and capable of working a full-time job at the minimum wage of \$9.80 per hour. This results in potential income of \$20,384.²⁷ A primary custody child support amount calculated from this income, plus the Alaska PFD, results in a \$309 monthly support amount.²⁸

Given the parties' 50/50 custody arrangement and the above primary custody calculations, the shared custody formula results in a \$43.50 monthly support obligation, owed by Ms. D for 2017 and ongoing.²⁹

2. 2016 Calculations

In 2016, Ms. D worked as a dental assistant and earned gross wages of \$20,004.17, plus she received the PFD.³⁰ This income results in a primary custody calculation of \$304 per month for one

²⁴ Civil Rule 90.3(a)(4).

²⁵ \$14.16/hr x 40 hours/week x 44 weeks = \$24,921.60.

²⁶ See Attachment A (child support calculation from <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

²⁷ \$9.80/hour x 40 hours/week x 52 weeks = \$20,384. See also Exhibit 6, p. 14.

²⁸ Exhibit 6, p. 14.

²⁹ See Attachment B (shared custody calculation); Civil Rule 90.3(c)(3) (child support below the \$50 minimum is permissible if calculated under the shared custody formula).

³⁰ Exhibit 8.

child.³¹ This income is substantially higher than CSSD previously estimated, because CSSD did not yet know Ms. D's 4th quarter 2016 earnings when it issued the Amended Administrative Child and Medical Support Order on January 23, 2017.³² However, that information is now available, and it most accurately summarizes Ms. D's income during the period for which support is to be paid. Therefore, it should be included in the child support calculation.³³

During the administrative review hearing before CSSD, Mr. L indicated that his only 2016 income came from roughly four months of full-time work at his uncle's lodge in No Name, where he earned roughly \$12 per hour.³⁴ CSSD determined that this income, plus the PFD, resulted in total gross income of \$9,342.³⁵

As a general rule, child support for the time period before the effective date of a child support order is to be based on the parent's actual total income for the period in which support is being calculated.³⁶ However, because Mr. L also was voluntarily and unreasonably underemployed in 2016, it is appropriate to impute additional income to him for that time period.³⁷ Mr. L did not participate in the hearing, so he could not explain the reasons for his 2016 work schedule. Based on the totality of the evidence in this case, including Mr. L's work history, qualifications, and job opportunities, it is reasonable to include some imputed income in his 2016 calculation. Because this calculation addresses pre-order arrears, it is most reasonable to include potential income from a part-time, 20-hour weekly job at minimum wage, for another 32 weeks of 2016. This results in potential gross income of \$6,272.³⁸ The sum of Mr. L's actual and potential income for the year totals \$15,614.³⁹ Under a primary custody calculation, this income results in a support obligation of \$246 per month.⁴⁰

³¹ Exhibit 12, p. 1.

³² See Exhibit 6, p. 11 (basing 2016 income on 4th Quarter 2015 unemployment benefits, plus wages from 1st – 3rd Quarters of 2016).

³³ 15 AAC 125.050(a), (b).

³⁴ Exhibit 6, pp. 2-3. CSSD calculated his wages as follows: \$12/hour x 40 hours/week x 17 1/3 weeks = \$8,320.

³⁵ Exhibit 6, p. 12. Under the primary custody formula, this income results in a support amount of \$144 per month.

³⁶ 15 AAC 125.050(b).

³⁷ *Id.*

³⁸ \$9.80/hour x 20 hours/week x 32 weeks = \$6,272. Since Mr. L would not have received vacation or other benefits from such work, this estimate includes roughly 2.5 weeks of unpaid leave time.

³⁹ \$6,272 + \$9,342 = \$15,614.

⁴⁰ Attachment C (child support calculation from <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

Under the parties' 50/50 custody arrangement for J throughout 2016, their income differences result in a shared custody calculation of \$43.50 per month, owed by Ms. D for the months of May through December 2016.⁴¹

IV. Conclusion

The parties have exercised shared custody of J on a 50/50 basis at all times relevant to this case. The parties' reciprocal child support obligations for 2016 and 2017 have been recalculated based on the evidence produced through the administrative hearing process. Under the shared custody formula, Ms. D is obligated to pay 2017 and ongoing child support for J in the amount of \$43.50 per month. Her obligation for May 2016 through December 2016 is also \$43.50 per month. If the parties' financial situations change in the future, either party may request a modification review.

V. Child Support Order

- Ms. D is liable for child support for J in the amount of \$43.50 per month for May through December 2016, and \$43.50 per month for January 2017 and ongoing;
- All other provisions of the Amended Administrative Child and Medical Support Order dated January 23, 2017, remain in full force and effect.

DATED: March 10, 2017.

By: Signed
Kathryn Swiderski
Administrative Law Judge

⁴¹ Attachment D (shared custody calculation).

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 29th day of March, 2017.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge/OAH
Title

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