

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

In the Matter of

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G R

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OAH No. 17-0201-CSS

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Agency No. 01197744

DECISION AND ORDER

I. Introduction

G E appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division establishing her ongoing child support obligation for her son S at \$249 a month, with arrears going back to June 2016. The division based this order on estimated earnings; it estimated that Ms. E was employed half-time at \$15.24 an hour.

Based on the evidence in the record on Ms. E's actual earnings in 2016, Ms. E's child support obligation should be set at \$51 a month.

III. Facts

G E and M D have a son, S.¹ The two parents do not have a formal custody agreement. S lived full time with Ms. E in 2014, and part of 2015. Then S went to live with Mr. D.² In June 2016, Mr. D began receiving public assistance for S. On June 13, 2016, the division requested income information from both parents, the first step toward establishing an administrative child support order.³ Neither parent responded. Meanwhile, S went back to Ms. E's house. S stayed with Ms. E for the entire month of July 2016, and through August 2016 until school started.⁴ Then S went back to live with Mr. D, where he has remained.

Ms. E had a successful hair salon in City A until 2013. In 2013, she got married and moved to City B. In City B, she first worked in other salons, and then opened her own salon again in May 2015.⁵ She suffered immediate setbacks in the business, followed by stress and health problems. Her hair started falling out. She was eventually diagnosed with demodex folliculitis. By mid-2016 this condition had caused her to lose all of her hair, which hindered her

¹ Ms. E was known as G R before her marriage.

² Testimony of E.

³ CSSD Pre-Hearing Brief at 1.

⁴ Testimony of E, G. Ex. 2 at 2 - 3; Ex. 4 at 6; Ex. 5 at 74 - 76; Letter from N and L G to CSSD received by CSSD 3/29/17.

⁵ Testimony of G; Ex. 4 at 4, Ex. 8 at 2.

ability to work as a hairdresser.⁶ Her father bought wigs for her. In September 2016, Ms. E's mother worked with Ms. E in the salon for two weeks, during which time Ms. E had an average of 1 - 2 clients a day.⁷

On October 25, 2016, the division issued an Administrative Child and Medical Support Order. Because Ms. E had not supplied financial information, the division estimated her annual earnings as a hairdresser based on full-time employment at \$15.24 an hour.⁸ Ms. E requested an administrative review, arguing that her earnings were much less than the division's estimate. She submitted a large volume of medical bills from 2015 and early 2016, a Schedule C for her business for 2012, and business profit and loss estimates for 2013, 2014, 2015, and 2016.⁹ Following the administrative review, on January 30, 2017, the division issued an Amended Administrative Child and Medical Support Order setting Ms. E's child support obligation at \$249 a month, based on half-time employment as a hair stylist at \$15.24 an hour.¹⁰ The amended order did not grant the visitation credit Ms. E had requested, because Mr. D appeared at the review hearing and opposed the request. Ms. E appealed the Administrative Review Decision and Amended Administrative Child and Medical Support Order.¹¹

Ms. E failed to appear telephonically or in person on March 22, 2017, the date originally scheduled for the hearing in this matter. However, on March 29, 2017, she filed a letter and supporting documents with the division showing good cause for her failure to appear.¹² The hearing was rescheduled for April 27, 2017. At the April 27, 2017 hearing, Ms. E requested a continuance so her mother could assist her in presenting her case. A second hearing session was held on May 1, 2017. Ms. E represented herself, with assistance and testimony from her mother, N E G. Child Support Specialist Brandi Estes represented the division. Calls were placed to Mr. D at his telephone number of record for each of the three hearing sessions, but Mr. D could not be reached and did not appear in person. Following the hearing, the record was held open for Ms. E to submit her tax return for 2016 and for the division to provide new calculations. Ms. E

⁶ Ex. 8 at 2; Exhibit 6 at 1.

⁷ Testimony of G.

⁸ Exhibit 3 at 1, 5. The division cited state Occupational Employment Statistics as the source for the hourly wage figure.

⁹ Exhibits 4 and 5.

¹⁰ The division based its estimate on 1040 hours annually (half-time) at \$15.24 an hour.

¹¹ Exhibit 8.

¹² Under 15 AAC 05.020(j), this showing was timely as it was within 10 days of the original hearing date.

submitted part of her tax return. The division did not submit new calculations. The record closed on May 17, 2017.

III. Discussion

Ms. E argues that the division overestimated her earnings. She also argued that the division should have given her credits for extended visitation, for cash payments she made to Mr. D and to S, and for health insurance for S provided through her husband.¹³

A. *Ms. E's child support arrears and ongoing obligation*

Ms. E challenged the division's estimate of her annual income. The division estimated Ms. E's earnings from her self-employment as a hairdresser at \$15,849.60 based on her working half time at \$15.24 an hour. The division added a permanent fund dividend to arrive at total gross income of \$16,871, and a support obligation of \$249 for one child.

At the outset, it is important to note that the \$15,849.60 annual earnings figure is an estimate of Ms. E's earnings. The original order in this case stated that the division did not have actual income information, and so had estimated Ms. E's earnings using an hourly wage statistic for hairdressers of \$15.24 an hour. It assumed full-time employment.¹⁴ The amended order issued following the administrative review reduced the estimated hours of employment to half-time.¹⁵ The division did not find that Ms. E was voluntarily unemployed or underemployed.¹⁶

After the hearing, Ms. E submitted tax records showing that she reported gross business income of \$17,519 and expenses of \$19,407 to the Internal Revenue Service for the 2016 calendar year, for a loss of \$1,888.¹⁷ However, her reported business expenses included \$3,915 in depreciation. According to the commentary to Civil Rule 90.3, "income from self-employment ... includes the gross receipts minus the ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses ..."¹⁸ It is not clear from the materials submitted what portion of the \$3,915 was accelerated depreciation, so it is assumed to be 100%. Without the depreciation expense deduction, Ms. E had a profit of \$2,027 for her

¹³ Ex. 8.

¹⁴ Ex. 3 at 4, 5, 8.

¹⁵ Ex. 7, at 8, 11. At Ex. 7, p.7, the box saying the income determination was based on actual information was checked, rather than the box for estimated income, but this appears to have been an error, as the method used for estimating income is specified at the bottom of the child support guidelines worksheet at Ex. 7, p. 11.

¹⁶ Ex. 3 at 4; ex. 7 at 7.

¹⁷ Schedule C submitted by Ms. E.

¹⁸ Commentary at III.B.

business in 2016. Ms. E received a permanent fund dividend of \$1,022.¹⁹ Thus, Ms. E's total income for 2016 for child support purposes was \$3,049, or \$254 a month. Applying Civil Rule 90.3(a)(2), Ms. E's child support obligation for one child is 20 percent of \$254, or \$51 a month.

B. Credit for extended visitation

Ms. E requested a visitation credit for the time she had S in July and August 2016. At the administrative review hearing, Mr. D disputed whether S was in Ms. E's care.²⁰ However, the record in this case supports Ms. E's assertion that S was living with her for the entire month of July, and for about two-thirds of August.²¹

Under Civil Rule 90.3(a)(3), a court may allow the obligor parent to reduce child support payments by up to 75% for any period in which the obligor parent has extended visitation of over 27 consecutive days.²² Under division regulations, if a support order allows an extended visitation credit, the obligor can request that from the agency if visitation is more than 27 days.²³ A support order can be reduced below the \$50 per month minimum where "the parent is entitled to an extended visitation credit under a valid order granting the parent visitation in excess of 27 consecutive days and providing for a credit for a period in which the extended visitation is actually exercised."²⁴

Under the circumstances of this case, in the absence of a court order regulating custody, the division's denial of Ms. E's request for an extended visitation credit for the time S was in her care in July and August of 2016 against her child support arrears should be upheld.

C. Other credits

In her appeal, Ms. E requested a credit for cash payments totaling \$290 made to Mr. D and directly to S between November 2016 and February 2017.²⁵ However, Ms. E did not demonstrate that this money was intended by *both* parents as a direct payment of child support, therefore she is not eligible for a credit for cash payments.²⁶

¹⁹ Ex. 5 at 16.

²⁰ Ex. 7 at 2.

²¹ *Supra*, n. 4.

²² Note that there is also an administrative process for requesting an extended visitation credit where permitted under a child support order. 15 AAC 125.480. Because this is an establishment case, the regulation is not applicable here.

²³ 15 AAC 125.480.

²⁴ 15 AAC 125.075(d)(1).

²⁵ Ex. 8 at 1 - 2.

²⁶ Under 15 AAC 125.105(b), when calculating arrears, the agency can give credit for direct payments made directly to the custodial parent. However, "[i]n order for the obligor to receive credit for direct payments, evidence

Furthermore, Ms. E requested credit for buying new clothes and school supplies for S. However, a credit for these expenditures is not permitted under division regulations because Mr. D was receiving public assistance for S at the time.²⁷

Finally, Ms. E requested a credit for S's health insurance, which is being provided through her husband's employment.²⁸ However, she did not supply any evidence that she or her husband is paying anything for this coverage. Ms. E did not show that the division erred in not granting her a credit.

IV. Conclusion

Ms. E's child support obligation for S, based on her actual income in 2016, should be set at \$51 a month. The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Ms. E's child support obligation for S is \$51 a month, effective June 1, 2017 and ongoing.

2. Ms. E's child support arrears for the period June 1, 2016 - May 31, 2017 are \$612 (\$51 a month).

3. All other provisions of the division's Amended Child Support and Medical Support Order issued on January 30, 2017 remain in effect.

Dated: June 6, 2017.

Signed _____
Kathryn L. Kurtz
Administrative Law Judge

must show a likelihood, in the determination of the agency, that the direct payment was actually made to the custodial parent for the period for which arrears are being calculated and that the direct payment was intended by both parents to be a direct payment of child support.”

²⁷ Under 15 AAC 125.105(c), the agency may grant a credit towards arrears for an in-kind contribution if both parents agree in writing. However, “[t]he agency will not give credit for an in-kind contribution under this subsection for any period of time during which the child received public assistance or was in state-sponsored foster care or state placement.”

²⁸ Ex. 8 at 1, 9, 10.

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 23rd day of June, 2017.

By: Signed
Signature
Kathryn L. Kurtz
Name
Administrative Law Judge
Title

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