

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

In the Matter of)	
)	
B J. M)	OAH No. 17-0202-CSS
<hr style="width:40%; margin-left:0;"/>)	Agency No. 001206503

DECISION AND ORDER

I. Introduction

B M appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on January 24, 2017. The modified order set Mr. M’s child support obligation for his son, Z, at \$484 per month, effective November 1, 2016, based on a shared custody arrangement in which Z spent 38% of his time with Mr. M and 62% with his mother, L Y.

Based on evidence produced through the hearing process, Mr. M’s support amount should be adjusted to \$286 per month, effective November 2016 and December 2016, based on the parties’ relative 2016 incomes and their 38/62 custody arrangement. The support amount should be adjusted to \$438 per month for January 2017, based on the parties’ expected 2017 incomes and their 38/62 custody agreement. Finally, it should be modified to \$261 per month beginning February 1, 2017, when the parties began sharing custody on an equal 50/50 basis.

II. Facts

A. Material Facts

B M and L Y are the parents of Z, age 2. The parties agree that they exercised shared custody of Z on a 38% (father), 62% (mother) schedule through 2016. They agreed to start sharing custody on an equal 50/50 basis starting January 1, 2017. However, they did not actually effectuate the 50/50 arrangement until February 2017.¹

Mr. M lives in No Name City and works for No Name Service Co. as an MBA Intern. He began the job in May 2016 and expects it to end in 2017. In 2016, Mr. M earned gross wages of \$33,478 from No Name Service Co.² He also received a 2016 Alaska PFD of \$1,022 and dividend payments from several Alaska Native entities. He received \$913 from Corporation 1, Inc., \$2,850 from Corporation 2, Inc., and \$6,475 from the Corporation 3.³ The sum of these 2016 sources of income is \$44,738.

¹ M testimony; Y testimony.
² Exhibit 6, p. 22.
³ Exhibit 6, pp. 19-23.

In 2017, Mr. M expects to continue earning roughly the same monthly income that he earned as an MBA Intern, even after his internship ends. This results in expected gross wage income of approximately \$50,217.⁴ He also expects to earn a 2017 PFD and dividend income roughly equal to the sums he received in 2016. This results in expected 2017 income of \$61,477 from all sources.⁵

Ms. Y also lives in No Name City. She is a full-time student at No Name College, where she is pursuing a bachelor's degree in accounting. She expects to graduate in approximately one year. She also works seasonally in the tourism and travel field. Her work is concentrated in the months of spring, summer and fall. In 2016, she earned \$23,930 in gross wages.⁶ She contributed \$961.35 of her wages to a retirement savings account, or roughly \$80.11 per month.⁷ She also received unemployment compensation of \$4,620 and an Alaska PFD of \$1,022.⁸ This brings her 2016 income from all sources to \$29,572.

At the time of the March 2017 hearing, Ms. Y was not working. She was laid off from her last job in December 2016, and she is actively looking for work. She expects her 2017 income to be roughly equal to her 2016 income. Her 2017 income therefore is expected to be approximately \$29,572.

The parties share childcare expenses for Z on an equal basis. In 2016, each parent's childcare out-of-pocket expenses averaged \$188 per month.⁹ In 2017, Z's daycare will cost \$875 per month.¹⁰ Therefore, each party will pay half this expense, or \$437.50.¹¹

B. Procedural History

On August 30, 2016, CSSD received a verbal request to modify the existing child support order.¹² In October 2016, CSSD issued to both parents a Notice of Petition for Modification of Administrative Support Order.¹³ The notice informed both parties of their obligation to provide

⁴ Mr. M earned gross wages of \$33,478 from May through December 2016. This equates to monthly wages of \$4,184.75. ($\$33,478 / 8 \text{ months} = \$4,184.75$.) On an annualized basis, this wage totals \$50,217.

⁵ Gross earned income of \$50,217 + PFD \$1,022 + \$913 Corporation 1, Inc. + \$2,850 Corporation 2, Inc. + \$6,475 Corporation 3 = \$61,477.

⁶ Exhibit 6, p. 6.

⁷ Y submissions dated 4/5/17 (Fidelity statement), 4/11/17 (explanation re Fidelity statement).

⁸ Exhibit 6, pp. 6, 10

⁹ Exhibit 6, p. 14 ($\$2,550.50 / 12 = \187.96).

¹⁰ See Exhibit 6, p. 15.

¹¹ In 2016, Ms. Y received some childcare assistance payments, which defrayed her daycare expenses. Means-based sources of income are not considered as income for purposes of Civil Rule 90.3. See Civil Rule 90.3, Commentary III.A. On April 19, 2017, Ms. Y submitted a statement indicating that she is not receiving childcare assistance in 2017. This decision therefore credits her with a full \$437.50 childcare deduction from income for the 2017 support calculation.

¹² CSSD pre-hearing brief, p. 1.

¹³ Exhibit 1.

CSSD with income information. CSSD received income information from Mr. M's employer and from Ms. Y.¹⁴

On January 24, 2017, CSSD issued a decision granting the request for a modification.¹⁵ It also issued the Modified Child Support and Medical Support Order that is the subject of this appeal.¹⁶ The order modified Mr. M's obligation to \$484 per month, effective November 2016, based on a 38/62 custody arrangement.¹⁷ Mr. M requested a formal hearing.¹⁸ In his appeal request, Mr. M notified CSSD of the parties' new 50/50 custody plan, he provided additional income information, and he requested deductions for each parent's work-related childcare expenses and retirement contributions.¹⁹

The formal hearing took place on March 23, 2017. Mr. M and Ms. Y both appeared telephonically and represented themselves. Child Support Specialist Joseph West represented CSSD. The hearing was recorded. The record closed on April 19, 2017, after the parties submitted additional evidence regarding their retirement contributions and childcare expenses, CSSD submitted post-hearing calculations, and the parties were provided an additional opportunity to respond to CSSD's proposed revisions.

III. Discussion

In a child support matter, the person who files an appeal bears the burden of proof.²⁰ Mr. M filed this appeal, so he must prove by a preponderance of the evidence that the January 24, 2017 Modified Administrative Child Support and Medical Support Order was incorrect.²¹ Because of the additional evidence produced during the hearing process, Mr. M met his burden, as discussed below.

A. Overview of the Civil Rule 90.3 analysis

Under Civil Rule 90.3, a parent's child support obligation is to be calculated based on the parent's total income from all sources during the period for which the support is being paid.²² By its nature, this determination is a somewhat uncertain endeavor, since the relevant calculation includes an assessment of expected future income.²³ If the parties' financial situations

¹⁴ Exhibits 2, 3.

¹⁵ Exhibit 4.

¹⁶ Exhibit 5.

¹⁷ *Id.*

¹⁸ Exhibit 6.

¹⁹ *Id.*

²⁰ 15 AAC 05.030(h).

²¹ 2 AAC 64.290(e).

²² *See also* 15 AAC 125.020, 15 AAC 125.030.

²³ Civil Rule 90.3, Commentary III.E.

significantly differ from the expectations on which this decision is based, either party may request a modification review.

Once a parent's total income from all sources is determined, Civil Rule 90.3 provides for certain deductions from income, resulting in calculation of the parent's adjusted annual income.²⁴ The rule provides mandatory deductions for items such as federal income taxes, Social Security and Medicare taxes, and mandatory contributions to a retirement or pension plan. Deductions for voluntary contributions to a retirement or pension plan are also allowed, as long as total voluntary and mandatory retirement contributions do not exceed 7.5% of the parent's gross wages.²⁵ Work-related childcare costs for the child who is the subject of the support order also may be deducted.²⁶ This deduction is available to parents who pay for child care, either so they can work or so they can be enrolled in an educational program that will improve their employment opportunities.²⁷

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 support obligation to the other is first determined under the primary custody formula, based on the income figures for that parent for the year in question. The reciprocal primary custody support obligations are then inserted into a shared custody formula.²⁸ 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.

Deductions from income

After the formal hearing in this matter, each parent submitted evidence of his or her retirement plan contributions. Mr. M submitted documentation showing that he contributed \$3,103.90 to a 401(k) plan in 2016.²⁹ For 2016, he is therefore entitled to a monthly deduction of \$258.66.³⁰ For 2017, he plans to contribute at least 7.5% of his income to his retirement plan. Therefore, his retirement deduction increases to \$313.86 per month in 2017.³¹

²⁴ Civil Rule 90.3(a)(1).

²⁵ Civil Rule 90.3(a)(1)(B).

²⁶ Civil Rule 90.3(a)(1)(E).

²⁷ Civil Rule 90.3, Commentary III.D.4.

²⁸ *See, e.g.*, Exhibit 9, pp.1, 4.

²⁹ Exhibit 6, p. 22.

³⁰ $\$3,103.90 / 12 \text{ months} = \$258.66.$

³¹ $(7.5\% \times \$50,217) / 12 \text{ months} = \$313.86.$

Ms. Y submitted evidence of her \$961.35 contribution to an IRA in 2016. This equates to an average monthly contribution of \$80.11, and she is entitled to that deduction for 2016 and 2017.³²

Both parties have been paying work-related childcare expenses for Z. Ms. Y qualifies for the childcare deduction, because she requires childcare while she pursues her accounting degree and while she works in the travel industry. The parents' agreement is to share these expenses equally.³³ In 2016, each parent's deduction is \$188 per month. In 2017, each parent's deduction is \$437.50 per month.

B. November and December 2016 support calculation

For the months of November and December 2016, each parent's support obligation for Z under the primary custody formula can be calculated based on his or her actual 2016 income. In 2016, Mr. M earned \$33,478 from his job, a total of \$10,238 in Native dividends, and \$1,022 from the PFD. After deductions for matters such as federal taxes, Social Security, his retirement contributions, and the work-related child care credit discussed above, this income would result in a primary custody obligation of \$533 per month.³⁴

In 2016, Ms. Y received an annuity inheritance of \$4,086.³⁵ Generally, the principal amount of one-time gifts and inheritances is not included as income for child support purposes, though interest generated from the principal amount would be included.³⁶ As a result, Ms. Y's 2016 income from all sources comes from her wages, unemployment benefits, and the PFD. The total of these sources is \$29,572. After applicable deductions, including work-related childcare expenses and retirement contributions, this income results in a primary custody calculation of \$366 per month.³⁷

Given the parties' 38/62 custody arrangement in November and December 2016, the shared custody formula results in a \$286 monthly support obligation, owed by Mr. M for those two months.³⁸

³² Ms. Y did not submit information suggesting that she will contribute more to her IRA in 2017 than she did in 2016.

³³ They may have some disputes as to whether each parent has actually paid his or her 50%, however.

³⁴ See Attachment A (child support calculation from <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

³⁵ Exhibit 6, p. 6.

³⁶ Civil Rule 90.3, Commentary III.A. See also 15 AAC 125.030(b)(3).

³⁷ Attachment B (child support calculation from <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

³⁸ Attachment C (2016 shared custody calculation).

C. 2017 support calculations

Ms. Y expects that her 2017 income will be essentially identical to the 2016 total.³⁹ Therefore, her 2017 calculation includes the same wages, unemployment and PFD income used for 2016. After accounting for her retirement contributions and childcare expenses, her income results in a primary custody calculation of \$317 per month for one child.⁴⁰

Mr. M's likely 2017 income includes his gross wages, the PFD and his dividends payments. This results in total gross income from all sources of \$61,477. After appropriate deductions, his income results in a primary custody calculation of \$665 per month for one child.⁴¹ This calculation significantly differs from CSSD's post-hearing submission, because it includes Mr. M's likely dividend payments from each of the three Native entities that paid 2016 dividends.

Two calculations are necessary under the shared custody formula for 2017: one based on the parties' 38/62 custody arrangement in January; and one to reflect their 50/50 custody arrangement in February and ongoing. For January 2017, the formula results in a shared custody calculation of \$438, owed by Mr. M.⁴² Beginning in February 2017, the parties' income differences result in a 50/50 shared custody calculation of \$261 per month, owed by Mr. M for February 2017 and ongoing.⁴³

IV. Conclusion

The parties' reciprocal child support obligations for 2016 and 2017 have been recalculated based on the evidence produced through the formal hearing process. Under the parties' 38% (father), 62% (mother) custody agreement during November and December 2016, their income differences result in \$286 monthly support obligation, owed by Mr. M for those two months. Mr. M's support amount changes to \$438 for the month of January 2017, still under the 38/62 custody arrangement, due to changes in the parties' 2017 income expectations. Beginning in February 2017, when their 50/50 custody arrangement took effect, the shared custody formula results in a \$261 ongoing obligation, again owed by Mr. M.

V. Child Support Order

- Mr. M's child support amount for Z is adjusted to \$286 per month for November and December 2016;

³⁹ Y testimony.

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

⁴¹ Attachment E (child support calculation from <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

⁴² Attachment F (2017 shared custody calculation, January).

⁴³ Attachment G (2017 shared custody calculation, February and ongoing).

- Mr. M’s support amount is further adjusted to \$438 for January 2017; and
- Mr. M’s support amount is again adjusted to \$261 per month, effective February 1, 2017 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 24, 2017, remain in full force and effect.

DATED: April 21, 2017.

By: Signed _____
Kathryn 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 5th day of May, 2017.

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

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