

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

In the Matter of)	
)	
N S)	OAH No. 17-0479-CSS
<hr style="width:40%; margin-left:0;"/>)	Agency No. 001182298

DECISION AND ORDER

I. Introduction

N S appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 11, 2016. The order added a child, L, to Mr. S’s existing support order for another child, T, and it adjusted Mr. S’s ongoing monthly support obligation from \$258 per month for one child to \$220 per month for two children. Mr. S argued that he is unemployed and has no income. He also requested paternity testing.

Based on the record and after careful consideration, the August 11, 2016 Modified Child Support and Medical Support Order is affirmed. The Alaska Bureau of Vital Statistics indicates that Mr. S signed a voluntary affidavit acknowledging paternity of L; therefore, he may not contest paternity in this administrative proceeding. In addition, Mr. S did not meet his burden to show that his child support obligation for two children should be less than \$220 per month.

II. Facts

Mr. S and custodial parent U M have two children, T, 5, and L, 1. Ms. M has primary custody of both children. Mr. S also has two children with other partners: a 12-year-old daughter who lives with Mr. S’s parents, and a one-year-old son, who is several weeks older than L. Mr. S does not pay child support for his oldest child.¹ A child support order for his son has been issued but is not yet final.²

In August 2012, CSSD issued a child support order setting Mr. S’s ongoing support obligation for T at \$258 per month.³ L was born on October 28, 2015.⁴ In May 2016, CSSD received notice that Ms. M and the two children were receiving public assistance.⁵ In June 2016, CSSD initiated a modification to add L to the existing support order.⁶ CSSD did not receive any income information from either parent, however.

¹ S testimony.
² CSSD hearing representative statement.
³ Exhibit 1.
⁴ Exhibit 3, p. 3; Exhibit 6 (electronic copy of L’s birth certificate).
⁵ CSSD pre-hearing brief, p. 1.
⁶ Exhibit 2.

On August 11, 2016, CSSD issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.⁷ The order added L, and it set Mr. S's support amount for two children based on imputed income from a part-time, minimum wage job earning gross annual wages of \$10,140, plus a \$1,000 Alaska PFD.⁸ After applicable deductions, this income resulted in a child support amount of \$220 per month for two children, effective September 1, 2016 and ongoing.⁹ The order also set Mr. S's pre-order arrears for L at \$49 per month for four months, from May 2016 through August 2016.¹⁰ Mr. S was not served with the modified order until March 29, 2017.¹¹ He then appealed and requested a formal hearing.¹²

The formal hearing took place on May 18, 2017. Mr. S appeared by telephone, represented himself, and testified on his own behalf. Child Support Specialist Joseph West also appeared by telephone and represented CSSD. Ms. M did not appear or answer a telephone call to her number of record, so she did not participate. The hearing was recorded. All submitted documents were admitted, and the record closed on May 18, 2017.

Mr. S is 31 years old. He lives in No Name City with his girlfriend, in a home that Mr. S owns and has paid in full. He currently is not working, and he has not held any steady employment in recent years. When he works, Mr. S is self-employed. He works on a project-by-project basis and is typically paid in cash.¹³ He has skills and experience as a mechanic and a general laborer. His work as a mechanic focuses on car, truck, and small engine repairs.¹⁴

Mr. S's ability to work in the next several weeks is limited, because he is recovering from a surgical procedure that took place roughly one week before the hearing in this matter.¹⁵ His physical activity is temporarily restricted while he recovers. For the first four to six weeks, he cannot lift weights exceeding ten pounds, but the restrictions gradually ease over the next four weeks. A complete recovery is expected within eight to ten weeks from the surgery.

Mr. S agreed that, apart from his temporary medical restrictions, there are no medical or physical reasons he cannot work. He acknowledged that he is looking for work, and he expects to

⁷ Exhibit 3.

⁸ Exhibit 3, pp. 6, 8-9.

⁹ Exhibit 3, pp. 3-4.

¹⁰ *Id.*

¹¹ Exhibit 3, p. 16.

¹² Exhibit 4. CSSD agreed that Mr. S's appeal was timely made.

¹³ Neither the Alaska Department of Labor nor federal reporting databases show any recent employer-reported income for Mr. S. *See* CSSD pre-hearing brief, p. 1.

¹⁴ S testimony.

¹⁵ *Id.*

earn income in 2017. When asked what gross income he is likely to earn in 2017, Mr. S estimated that he will earn approximately \$10,000 over the course of the year. However, he questioned how his child support obligation can be based on income that he has not yet earned, since he has not recently held a job. He also expressed concern that he may be remanded to jail in 2017, depending on the outcome of pending criminal charges.

III. Discussion

As the person who requested a formal hearing, Mr. S has the burden of proving by a preponderance of the evidence that CSSD's modified child support order is incorrect.¹⁶

A. *Affidavit of Paternity*

Mr. S's first objection to the modified support order is that his paternity of L has not been established. However, the evidence in the record is that Mr. S and Ms. M executed a two-party voluntary affidavit of paternity, in which they jointly attested to Mr. S's paternity of L.¹⁷ Because of the affidavit of paternity, the Bureau of Vital Statistics placed Mr. S's name on L's birth certificate.¹⁸ Although Mr. S does not remember signing the affidavit, the evidence supports the conclusion that he did so.

Alaska Statute 25.27.166(a) authorizes CSSD to initiate proceedings to disestablish paternity of a child in certain circumstances. However, the statute specifically bars CSSD from disestablishing paternity in situations where the two parents both signed a form for acknowledging paternity under AS 18.50.165.¹⁹ In that situation, the signed acknowledgement constitutes a "legal finding of paternity" for a child born out of wedlock.²⁰ After a specified period of time, this finding only may be contested in superior court on limited grounds.²¹

Because of the affidavit of paternity, Mr. S has been established as L's father. The time in which Mr. S could have voluntarily withdrawn his acknowledgement of paternity has passed.²² Therefore, if he wishes to contest the validity of the affidavit, he must do so in superior court. Neither CSSD nor the administrative law judge has the authority to order paternity testing or to

¹⁶ 15 AAC 05.030(h).

¹⁷ See Exhibit 6; CSSD hearing representative statement. CSSD submitted an electronic copy of L's birth certificate. Exhibit 6. Under "Type of Paternity," the certificate abbreviates the two-party voluntary affidavit of paternity as "2 Part Voluntary."

¹⁸ Exhibit 6. See also AS 18.50.160(e)(2); AS 18.50.165; AS 25.50.020(a)(3), (b).

¹⁹ AS 25.27.166(a)(2); AS 25.20.050(a)(3).

²⁰ AS 25.20.050(l).

²¹ *Id.*

²² *Id.*

initiate proceedings seeking to disestablish paternity. Thus, CSSD appropriately added L to Mr. S's child support order.

B. Child Support Calculation

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”²³ Adding a child to an existing child support order satisfies these requirements.²⁴

A parent is obligated both by statute and at common law to support his or her children.²⁵ In general, this obligation begins when the child is born.²⁶ In administrative child support cases, CSSD is required to assess financial responsibility starting with the month the custodial parent requested child support services, or with the first month in which public assistance or foster care was provided for the child or children.²⁷ In this case, CSSD became aware that public assistance was being paid on L's behalf in May 2016, so that is the first month for which Mr. S is obligated to support L through CSSD.²⁸

When CSSD sent Mr. S notice of the petition to modify the existing child support order, it also ordered him to provide his income information.²⁹ Mr. S did not do so, and CSSD found no records showing employer-reported wages or other income. Therefore, CSSD calculated Mr. S's modified support amount using imputed income based on a part-time, minimum wage job. During the hearing, Mr. S challenged the notion that CSSD can base his child support obligation on income he has not actually earned.

When an obligor-parent is voluntarily and unreasonably unemployed or underemployed, the law directs CSSD to base its child support calculations on the parent's “potential income.”³⁰ “Potential income” is determined after consideration of available information regarding the parent's work history, qualifications and job opportunities.³¹ In this case, CSSD implicitly concluded that Mr. S is voluntarily and unreasonably unemployed or underemployed, and it assessed his potential income at \$10,140 in gross annual wages. This is the income he would earn

²³ AS 25.27.190(e); 15 AAC 125.321(b)(1).

²⁴ 15 AAC 125.321(b)(2)(B).

²⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁶ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

²⁷ 15 AAC 125.105(a)(1), (a)(2).

²⁸ *See* Exhibit 3, pp. 3-4, 12.

²⁹ Exhibit 2.

³⁰ Civil Rule 90.3(a)(4); 15 AAC 125.020(b); 15 AAC 125.060(a).

³¹ Civil Rule 90.3(a)(4); 15 AAC 125.020(b); 15 AAC 125.060(a).

if he worked a part-time job, 20 hours per week, paid at minimum wage.³² CSSD's income calculation also included \$1,000 from the Alaska PFD.

Mr. S has not shown that CSSD erred in this assessment. He agreed that, apart from his temporary medical situation, there is no medical or physical reason he has not worked in recent months. He also agreed he could work a minimum wage job; he explained that he simply has not yet found one. Although he described having difficulty finding work, Mr. S did not explain why this is so, or why he has been unemployed or underemployed for years, given that there are available job opportunities in the No Name City area for mechanics, general laborers, and/or minimum wage workers. This suggests that Mr. S's lack of recent employment is the result of a voluntary and unreasonable lifestyle choice, rather than the result of economic factors.³³

Equally important, Mr. S agreed that, even with his medical recovery time, he expects that he will earn roughly \$10,000 during 2017.³⁴ This income is nearly identical to the potential income figure that CSSD attributed to him, and it supports CSSD's income determination.

Mr. S did not meet his burden to show that CSSD overstated his expected income. After allowable deductions, CSSD determined that this income results in an ongoing support obligation of \$220 per month for two children. Mr. S has not shown that he is entitled to a lesser amount. If Mr. S's circumstances materially change, for instance due to a long-term period of incarceration, he should keep CSSD informed so a modification review can take place.

C. Other Issues

Mr. S asserted that T lived in his home for approximately two years, from March 2014 to March 2016, so his child support obligation for her should be suspended for that period of time.³⁵ To pursue this issue, Mr. S should work with CSSD and provide documentation showing the dates T lived in his home. Upon that showing, CSSD can administratively adjust his case as appropriate.

Mr. S also indicated that he has made some child support payments for T and L directly to Ms. M, both by giving her cash and by paying for various items for the children. He did not describe the amount or timing of these payments with any specificity, however. Mr. S may be

³² \$9.75/hour x 20 hours/week x 52 weeks = \$10,140.

³³ *Cf. Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997) (issue is whether the obligor-parent's periods of unemployment are a result of economic factors or purely personal choices).

³⁴ S testimony.

³⁵ He also asserted that L lived with him from October 2015 to March 2016. However, Mr. S was not subject to an order to pay child support for her during that time.

entitled to a credit for direct payments made to Ms. M, if he provides CSSD with clear and convincing evidence that the payments were made and that both parents intended the payments to be a direct payment of child support.³⁶ As with the preceding issue, he should work with CSSD to pursue resolution of this issue.

IV. Conclusion

Mr. S did not meet his burden to show by a preponderance of the evidence that CSSD made a mistake when it added L to his child support order, when it set his arrears obligation for L, or when it modified his ongoing support amount for two children to \$220 per month. CSSD calculated this obligation based on its potential income determination, and Mr. S agreed he is likely to earn that amount over the course of the year.

Therefore, the August 11, 2016 Modified Administrative Child Support and Medical Support Order is affirmed. No variance was granted under Civil Rule 90.3(c).

V. Child Support Order

- The Modified Child Support and Medical Support Order dated August 11, 2016 is affirmed and remains in full force and effect.

DATED: May 23, 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 7th day of June, 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.]

³⁶ See 15 AAC 125.465.