

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

In the Matter of)

K E. C)

) OAH No. 17-0782-CSS

) Agency No. 001204710

DECISION AND ORDER

I. Introduction

J C appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division establishing K C's child support obligation for his sons Y and Z at \$148 a month, with arrears back to March 2016.

The division correctly established that Mr. C had a child support obligation for the period during which he was not residing with Ms. C and the children. The division correctly based its calculation of Mr. C's child support obligation and arrears on his actual wages. However, the division's calculations should be adjusted to reflect that Mr. C will likely not qualify for a 2017 permanent fund dividend.

II. Facts

K and J C are married.¹ Mr. C was incarcerated from February 2016 to June 2016, and again in October through December 2016.² After Mr. C was incarcerated and while the couple was living apart, Ms. C and the boys began receiving temporary assistance to needy families (TANF). After Mr. C's release, the couple began family therapy, and shared custody of the boys while they were living apart. Mr. C has now moved back into the home.³

Mr. C has worked in the construction and resource extraction industries. He collected unemployment insurance benefits in June and July of 2016. According to employer-reported earnings data from the Alaska Department of Labor and Workforce Development, he was employed during the third and fourth quarters of 2016 and the first quarter of 2017 by Dehart Construction.⁴ He has been unemployed since February 2017, and unable to find employment other than odd jobs.⁵ Mr. C has an older child for whom he pays child support of \$50 a month.⁶

¹ Testimony of J. C. Ms. C is also referred to as J X in the division's records.

² Exhibit 8 at 1.

³ Testimony of J. C.

⁴ Exhibit 9.

⁵ Exhibit 8 at 4.

⁶ Testimony of J. C.

Ms. C was briefly employed during the first quarter of 2016, but has been unemployed since then. She has had health issues. She is currently taking classes, with the goal of completing a nursing program.

The division acted to establish Mr. C's child support obligation after receiving notice that Ms. C and the children were receiving TANF.⁷ The division requested financial information from both parents in September 2016, and both parents provided child support guidelines affidavits for 2016.⁸ The division issued an Administrative Child Support and Medical Support Order on April 26, 2017 setting Mr. C's ongoing child support obligation at \$404 a month for two children, with arrears of \$375 a month starting in March 2016.⁹ The Cs requested an administrative review. Neither parent participated at the administrative review hearing, however, their requests for review stated that they shared custody equally. They also indicated that Mr. C was providing financial support for the family, but did not provide documentation.¹⁰

Following the administrative review, the division amended its order to reflect the Cs' custody arrangement beginning in July 2016.¹¹ The division applied the primary custody formula from March through June 2016, while Mr. C was incarcerated, and the shared custody formula thereafter. It reduced Mr. C's ongoing child support obligation to \$148 a month. It also reduced his arrears, to \$354 a month from March 2016 through June 2016, and \$228 a month from July 2016 through December 2016.¹² The division made separate calculations for 2016 and 2017, basing its calculations on Mr. C's actual income including wages reported to the Alaska Department of Labor, unemployment insurance benefits, and the permanent fund dividend. It used Ms. C's employer reported earnings and a permanent fund dividend for 2016, but for 2017 imputed income based on part-time employment at \$9.80.¹³ Ms. C appealed the administrative review decision.

A telephonic hearing was held on August 24, 2017. Ms. C participated; Mr. C did not participate. Child Support Specialist Kimberly Sledgister presented the division's case. The record closed on August 29, 2017.

⁷ Position Statement at 1.

⁸ Exhibit 2 at 1, 3.

⁹ Exhibit 4.

¹⁰ Exhibit 5 and 6.

¹¹ Exhibit 7 at 7.

¹² Exhibit 4 at 10; Exhibit 7 at 16.

¹³ Exhibit 7 at 6 - 15.

III. Discussion

Alaska Rule of Civil Procedure Rule 90.3 governs the calculation of child support. Civil Rule 90.3 sets child support as a percentage of the obligor parent's adjusted annual income. For two children, the obligation is 27 percent of adjusted income.¹⁴ Because Ms. C requested the hearing in this matter, Ms. C has the burden of proving that the division's order is incorrect.¹⁵

A. *Mr. C's child support obligation*

Ms. C argued that Mr. C does not owe her any child support, because he was contributing financially to help support the family throughout the period he was out of the home. However, Mr. C's obligation in this case is not to Ms. C, but to the state. A parent is obligated both by statute and at common law to support his or her children.¹⁶

Where a child receives public assistance from the state, the parent who owes a duty of support to that child is liable to the state in the amount of the assistance granted, except that the liability may not exceed the amount provided for in the support order.¹⁷ The division will establish arrears beginning in the first month state assistance was provided on behalf of the child.¹⁸ Ms. C and her children received public assistance through the TANF program in March 2016 and the following months. The division therefore correctly established Mr. C's child support obligation beginning in March 2016 based on the children's participation in the TANF program.

B. *Credit for direct payments*

Mr. C might be entitled to credit against his child support obligation arrears for direct payments made to Ms. C, but the direct payments have not yet been adequately documented.

Ms. C argued that Mr. C did not owe child support arrearages because he had been voluntarily paying her \$500 a month in child support.¹⁹ When calculating arrears, the agency "will give credit for direct payments made by or on behalf of the obligor directly to the custodial parent in the form of cash, a money order, a check made payable to the custodial parent, or a deposit or electronic funds transfer to a bank or equivalent financial account held by the custodial parent. In order for the obligor to receive credit for direct payments, evidence must show a

¹⁴ Alaska Rule of Civil Procedure 90.3(a)(1) and (2).

¹⁵ 15 AAC 05.030(h).

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹⁷ AS 25.27.120(a).

¹⁸ 15 AAC 125.105(a)(1).

¹⁹ Exhibit 8 at 2 - 3.

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.”²⁰

In this case, there is no dispute between the parents that Mr. C was making direct payments intended as child support. Ms. C, the custodial parent, reports that Mr. C was paying her \$500 a month in child support.²¹ She testified that he had used funds from a retirement account to provide this support. Mr. C submitted a statement requesting that his child support obligation be reviewed because “I have been paying her every month.”²²

However, the Cs have not yet provided the division with adequate documentation of these payments to enable the division to grant a credit. Ms. C raised this issue at the administrative review, but did not provide specific documentation of these payments, so the division did not grant any credit for the payments.²³

During the hearing, after Ms. Sledgister explained the documentation required to support a credit, Ms. C requested additional time to provide that information. At Ms. C’s request, the record was left open to allow her time to provide documentation of the payments. Although Ms. C did provide copies of two 2017 bank statements showing deposits from the period January through March 2017, she also indicated that she needed to go through more of her records. The division responded that Ms. C had not met the requirements for granting a credit for direct payments.²⁴

The material submitted by Ms. C does not specifically identify the source of the deposits reflected, so without further information it is not possible to ascertain whether they include child support payments from Mr. C. Therefore, the arrearages specified in the Amended Administrative Child and Medical Support Order dated June 8, 2017 will not be adjusted in this decision to reflect any direct payments. However, nothing in this decision prevents the Cs from continuing to pursue credit for direct payments through the C’s case worker.

C. Credit for in-kind payments

Ms. C also testified that Mr. C made in-kind child support payments while he was living out of the house by paying bills and buying things the children needed. However, the regulations

²⁰ 15 AAC 125.105(b).

²¹ Exhibit 8 at 1 - 2.

²² Exhibit 8 at 4.

²³ Exhibit 7 at 2.

²⁴ Submission to Record August 29, 2017.

do not permit credit for in-kind contributions for a period during which the children received public assistance.²⁵ Because Mr. C's child support obligation began in March 2016 when Ms. C and the children were receiving TANF, and because the division has indicated that his child support obligation will be suspended at the end of August 2017 when TANF payments end, the regulation rules out any credit for in-kind contributions in this case. Mr. C is not entitled to credit against his child support obligation arrears for in-kind payments.

D. Mr. C's incarceration and income

Ms. C questioned why the division assessed child support arrears for the months when Mr. C was incarcerated. She also questioned why the division did not set Mr. C's child support at \$50 a month.

The division based Mr. C's arrears for 2016 on his total income during 2016, including reported wages for July through December 2016 and unemployment insurance benefits.²⁶ The division did not include a permanent fund dividend for 2016. The division divided Mr. C's total income for the year to arrive at a monthly figure, and then set arrears at that amount for the months March 2016 through June 2016, while Mr. C was incarcerated and Ms. C had primary custody. It then reduced the monthly obligation to reflect shared custody beginning in July 2016.²⁷

The regulation requires the division to calculate an obligor's support obligation for the first year of the period for which support is being established. For the next year, the division will determine whether a material change in circumstances has occurred.²⁸ The regulation does not require the division to adjust its calculations based on month-to-month income fluctuations. The division did not err in assessing arrears for the months when Mr. C was incarcerated.

Also, the minimum child support that may be ordered under Civil Rule 90.3(c)(3) is \$50 a month. However, because Mr. C had significant actual earnings in 2016 and 2017, the division based his child support obligation on actual earnings rather than using the minimum amount. This is not a case where Mr. C faces a continued lack of income due to ongoing incarceration;

²⁵ 15 AAC 125.105(c).

²⁶ Exhibit 7 at 10.

²⁷ Exhibit 7 at 16.

²⁸ 15 AAC 125.105(e).

rather incarceration in this case only caused a temporary loss of income.²⁹ The division did not err in not issuing a minimum order in this case.

However, Mr. C's incarceration in 2016 likely precludes his eligibility for a 2017 permanent fund dividend (PFD). The division did not include a PFD in its calculation of Mr. C's income for 2016, but it did include a PFD in its 2017 calculations. It is undisputed that Mr. C was incarcerated during 2016. The permanent fund dividend eligibility statutes provide that an individual who was incarcerated during all or part of the qualifying year as a result of a misdemeanor conviction in Alaska is ineligible for a dividend for that year if the individual had two or more prior misdemeanors.³⁰ Mr. C had two or more prior misdemeanors.³¹ Therefore, it is more likely than not that Mr. C will not qualify for a 2017 PFD.

The division's calculations for 2017 should be adjusted accordingly. Subtracting the \$1,022 permanent fund dividend reduces Mr. C's adjusted annual income to \$18,054.96, and his monthly child support obligation for two children before the shared custody calculation to \$410 instead of \$429. Using this figure in the shared custody calculation yields a monthly child support obligation for Mr. C of \$134 a month instead of \$148.

IV. Conclusion

The division's Amended Administrative Child Support and Medical Support Order issued on June 8, 2017 should be adjusted to reflect the likelihood that Mr. C will not receive a 2017 PFD.

The child support amount in this order was calculated using the primary custody formula in Civil Rule 90.3(a) for March through June 2016, and the shared custody formula in Civil Rule 90.3(b) for July 2016 through August 2017 and ongoing.

At the hearing, the division indicated that it will suspend Mr. C's child support obligation at the end of August 2017, to coincide with the closure of the public assistance grant.

V. Child Support Order

1. Mr. C's ongoing child support for Y and Z is set at \$134 a month effective September 1, 2017.

²⁹ See *Bendixen v. Bendixen*, 962 P.2d 170, 173 (Alaska 1998), citing *Patch v. Patch*, 760 P.2d 526, 530 (Alaska 1988).

³⁰ AS 43.23.005(d)(2)(B)(ii).

³¹ The administrative law judge takes official notice that Mr. C had at least two prior misdemeanor convictions based on records maintained on the Alaska Court System's website. A party objecting to consideration of that information may state their objection in a proposal for action. See 2 AAC 64.300.

2. Mr. C is liable for child support arrears for Y and Z in the monthly amounts of \$354 for March 2016 through June 2016; \$228 for July 2016 through December 2016; and \$134 for January 2017 through August 2017.

3. All other provisions of the Amended Administrative Child Support and Medical Support Order dated June 8, 2017 remain in effect.

Dated: September 5, 2017.

Signed

Kathryn L. Kurtz
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 within 30 days after the date of this decision.

DATED this 21st day of September, 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.]