

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

IN THE MATTER OF:)

B. C. C.)

) OAH No. 04-0145-CSS
) CSSD NO. 001127743
) DOR NO. 040743
)

DECISION AND ORDER

I. Introduction

This case involves the Obligor B. C. C.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on September 13, 2004. The Obligee child is A., DOB 00/00/03.

The formal hearing was held on December 16, 2004. Mr. C. appeared in person; the Custodian, A. A. W., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 3, 2005.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. C.'s appeal should be granted. His child support should be calculated from his actual income and should include the credit for paying support for a prior child, but the \$3500 scholarship Mr. C. received should not be included in income.

II. Facts

A. History

On July 9, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. C.¹ He requested an administrative review.² Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on September 13, 2004, that set ongoing support at \$286 per month, with arrears of \$2811 for the period from December 2003 through September 2004.³ Mr. C. filed an appeal and requested a hearing on October 12, 2004.⁴

¹ Exh. 4.

² Exh. 5.

³ Exh. 8.

⁴ Exh. 10.

At the formal hearing, Mr. C. stated he disputes the arrears because his income was estimated too high, and because he pays support for three prior children. Mr. C. testified he was in school full-time in 2004 and he worked in addition to going to school. He said he worked on an average of 25 hours per week during most of 2004, and at the time of the hearing had increased to an average of 36 hours per week. Mr. C. also stated that in 2003, he received a scholarship from his employer, but the funds were not income, they were used for school expenses. He claimed the money was not income and submitted a copy of an earnings printout from his employer that shows he received \$3526 in “other compensation” in 2003.⁵

Mr. C. also testified, and CSSD verified, that he did not receive a PFD in 2003 because he was not eligible. Finally, Mr. C. stated the Obligeé A. is his fourth child and he pays support for three older children. He requested that his two cases be combined so he would be able to pay support for all four children together.

CSSD stated it would accept Mr. C.’s employer’s report that the \$3526 amount reported to him in 2003 was not income for child support purposes. CSSD said it would revise the calculations for 2003 using his actual income without the PFD. CSSD also said it would revise the 2004 calculation using Mr. C.’s most recent 2004 income, with two extra weeks of pay added to equal one full year’s worth of income. Mr. C. agreed to the calculations.

Regarding his request to combine his child support cases, CSSD explained to Mr. C. that his two child support cases have to remain separate because there are two custodians involved in these cases, and CSSD cannot involve either one in the other’s case. Mr. C. said he understood.

After the hearing, CSSD filed revised calculations for 2003, 2004 and 2005. The 2003 calculation is based on Mr. C.’s actual income,⁶ without the PFD and the scholarship funds, and it includes a deduction for Mr. C.’s child support payment for his prior children. The calculation results in a child support amount for A. of \$177 per month in 2003.⁷

For 2004, CSSD used Mr. C.’s year-to-date income through December 12, 2004,⁸ then added his estimated income through December 31, 2004. The calculation includes a deduction

⁵ Exh. A.

⁶ *Id.*

⁷ Exh. 11 at pg. 1.

⁸ Exh. B.

for Mr. C.'s support payments for his prior children, and the result is a child support amount for A. \$295 per month in 2004.⁹

CSSD also drafted a calculation for Mr. C.'s 2005 child support amount. The calculation is based on his estimated income for 2005 of \$30,064.32,¹⁰ and it includes the deduction for prior child support payments. The calculation yields a child support amount for A. of \$342 per month in 2005.¹¹

B. Findings

Based on the evidence in the record and after due consideration, I hereby find:

1. As required by 15 AAC 05.030(h), Mr. C. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect;
2. Mr. C. pays support for prior children in the amount of \$411.12 per month;
3. Mr. C. works an average of 36 hours per week at \$16.06 per hour;
4. CSSD's latest calculations correctly calculated Mr. C.'s child support at \$177 per month for 2003, \$295 per month for 2004, and \$342 per month for 2005 and ongoing.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹² Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources," minus mandatory deductions.

Mr. C. established that he was both employed and attending school in 2003 and 2004, and that his child support should be calculated from his actual income. He also pays support for three prior children in the amount of \$411.12 per month. He provided documents verifying his testimony, and CSSD revised his calculations accordingly.¹³ CSSD's revised calculations are correct.

IV. Conclusion

Mr. C. met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect because CSSD

⁹ Exh. 11 at pg. 2.

¹⁰ CSSD reached this figure by multiplying Mr. C.'s hourly wage of \$16.06 per hour for 36 hours per week times fifty two weeks in the year.

¹¹ Exh. 11 at pg. 3.

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ See Exh. 9 at pgs. 14-16 & Exh. 11 at pg. 2.

overestimated his income and did not include his support payment for prior children. CSSD revised the calculations, which should be adopted.

V. Child Support Order

1. Mr. C. is liable for child support in the amount of \$177 for December 2003, and \$295 per month for 2004;
2. Mr. C. is liable for child support in the amount of \$342 per month for January 2005 through May 2005, and ongoing.

DATED this 26th day of May 2005.

By: Signed
Kay L. Howard
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of B. C. C. be adopted as of this date and entered in his file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

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 of the date of this decision.

DATED this 26th day of May, 2005.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

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