

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

IN THE MATTER OF:)

C. M. P.)

) OAH No. 04-0217-CSS

) CSSD NO. 001131841

) DOR NO. 040823

DECISION AND ORDER

I. Introduction

This matter involves the Obligor C. M. P.'s appeal of an Amended Administrative Child and Medical Support Order the Child Support Services Division (CSSD) issued on November 4, 2004. The Obligee child in this case is B., DOB 00/00/98.

The formal hearing was held on February 1, 2005.¹ Mr. P. appeared in person; the Custodian of record, J. K. P., did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The record closed on February 25, 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 that Mr. P.'s appeal should be granted. Mr. P.'s child support should be calculated using the 43/57 percent shared custody formula, based on both parents' actual incomes.

I. Facts

A. History

On September 22, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. P.² He requested an administrative review.³ On November 4, 2004, CSSD issued an Amended Administrative Child and Medical Support Order that set ongoing child support at \$415 per month, with arrears of \$3695 for the period from March 2004 through November 2004.⁴ Mr. P. filed an appeal on November 22, 2004.⁵

¹ The hearing was held under Alaska Statute 25.27.170.

² Exhs. 1 - 3.

³ Exh. 4.

⁴ Exhs. 7 - 8.

⁵ Exh. 9.

At the formal hearing, Mr. P. challenged his support obligation for the period from March 2004 through June 2004. He claimed Ms. P. should not have been able to obtain Medicaid services during that time because B. is covered on his insurance. Mr. P. also stated that the shared custody child support calculation should be adjusted because he has custody of B. four days per week, not three days, and because Ms. P.'s income is higher than CSSD originally estimated.

CSSD informed Mr. P. that his support obligation for the period from March 2004 through June 2004 would be eliminated from his arrears because Ms. P. applied for CSSD services in July 2004. CSSD said even though Medicaid benefits were provided to B. during March through June, Ms. P.'s application for services should be considered the event that triggers Mr. P.' support obligation.

Mr. P. testified he and Ms. P. were divorced on December 3, 2004. He provided a copy of their divorce decree and parenting agreement. It states the parents were awarded shared physical custody of B., with Mr. P. having her overnight on Tuesday, Wednesday and Friday nights.⁶

Mr. P. testified as to his union dues and retirement deductions, and filed a copy of Ms. P.'s compensation statement from Providence Health System. It indicates Ms. P.' annual salary is \$23,736.96.⁷ CSSD supplemented the record with a copy of Mr. P.'s wage printout from the Department of Labor that shows he earned \$33,202.90 during the first three quarters of 2004.⁸

After the hearing, CSSD filed a Post-Hearing Brief that contains revised child support calculations using the shared custody calculation. CSSD used the P.'s parenting agreement to estimate Mr. P.' custody time at 43% and Ms. P.'s custody time at 57%.⁹ From these percentages, CSSD calculated Mr. P.'s child support obligation at \$225 per month for 2004 and \$232 per month for 2005.¹⁰ The calculations are based on Ms. P.'s annual salary from Providence Hospital and Mr. P.' wage printout. CSSD also included retirement and union dues expenses in Mr. P.'s deductions.¹¹

⁶ Exh. B at pg. 3.

⁷ Exh. A.

⁸ Exh.11.

⁹ Exh. 13 at pgs. 2 & 5.

¹⁰ Exh. 13 at pg. 1.

¹¹ Exh. 13 at pgs. 4 & 7.

B. Findings

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

1. Pursuant to the P.'s parenting agreement, Mr. P. has custody of B. three overnights per week, which constitutes 43% physical custody; Ms. P. has custody of B. four overnights per week, which equals 57% physical custody.
2. Ms. P.'s annual salary is \$23,736.96.
3. Mr. P.'s annual income is \$46,375.92.
4. CSSD's calculation of Mr. P.'s child support of \$225 per month for 2004 and \$232 per month for 2005 is correct.
5. Ms. P. filed for child support services in July 2004, which is the effective date of Mr. P.'s support obligation pursuant to this administrative action.

III. Discussion

A. Income

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." CSSD obtained current annual income figures for both parties and correctly used those figures in the shared custody calculations.

B. Shared Custody

When the parents exercise shared custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than in the situation in which one parent has primary custody. The rule defines shared custody as follows:

A parent has shared physical custody of children for purposes of this rule if the children reside with that parent for a period specified in writing of at least 30 percent of the year, regardless of the status of legal custody.

Civil Rule 90.3(f)(1).

In order for a visitation day to count toward the required 30% of the year, the child(ren) must stay overnight with the respective parent.¹³ Thus, even though Mr. P. has custody of B. for what he considers four days per week, it is considered three days per week for child support purposes because B. stays with him three nights per week. Three nights out of seven constitutes

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

42.8% of the overnights in a week, which is rounded to the nearest whole number - 43% - for the child support calculation.

Finally, CSSD eliminated Mr. P.'s child support for the months of March 2004 through June 2004, for which Mr. P. was initially charged. CSSD agreed with Mr. P. that the support obligation should begin as of July 2004, the month in which Ms. P. applied for child support services.

IV. Conclusion

Mr. P. met his burden of proving CSSD's calculations were incorrect. The parties exercise custody of B. on a 43/57 shared custody basis, with Mr. P. having her 43% of the time. Mr. P. provided current annual income figures for Ms. P. and himself, which CSSD used to revise the support calculations for 2004 and 2005. The revised calculations are correct and should be adopted. Accordingly, I issue the following child support order:

V. Child Support Order

1. Mr. P. is liable for child support of \$225 per month for the period from July 2004 through December 2004; and \$232 per month from January 2005 through March 2005.
2. Mr. P. is liable for ongoing child support in the amount of \$232 per month, effective April 2005 and ongoing.

DATED this 29th day of March, 2005.

By: Signed _____
Kay L. Howard
Administrative Law Judge

¹³ Civil Rule 90.3, Commentary V.A.

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 C. M. P. 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 29th day of March, 2005.

By: Signed _____
Terry L. Thurbon
Chief Administrative Law Judge

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