

The income calculation for the arrears was “based on zero income as none was reported or available.”⁷

Ms. Q objected to the calculation and requested an administrative review.⁸ After its review hearing, CSSD issued an Administrative Hearing Decision and Amended Administrative Child and Medical Support Order on December 7, 2018.⁹ The amended support order increased Mr. S’s ongoing monthly support obligation to \$159.00, in addition to pre-order arrears from April 1, 2018 to December 31, in the amount of \$886.00.¹⁰ It determined the ongoing obligation based on Mr. S’s total earnings of \$10,000 from a 2018 summer internship and a university fellowship program. As set forth below, CSSD reviewed the documents provided and concluded Mr. S has no other income that can be included in the child support calculation.

Ms. Q appealed the December 7, 2018 support order on the basis that the order incorrectly calculated Mr. S’s “work history, qualifications, and credentials.”¹¹ Ms. Q requested a formal hearing.¹² Other than voicing the general unfairness of the situation because of the financial strain she is under, Ms. Q argued that CSSD miscalculated Mr. S’s obligations because his student loans were not considered income, Mr. S is intentionally unemployed, so his income should be imputed, and Mr. S should pay for private health insurance for O. In support of her argument, she submitted 57 texts, photos, and other documents as evidence.¹³

*B. Material Facts*¹⁴

O Michael S was born on March 13, 2017 to O Q and K S. Paternity is established. Mr. S is on the birth certificate and submitted an affidavit affirming paternity.

O resides full time with his mother in City A, Alaska. Ms. Q works full time and cares for O, as well as her two older children. Mr. S began law school in 2017, and is currently a full-time student, in his third year, at the No Name University. He is scheduled to graduate in June

⁷ Exhibit 4 at 5.

⁸ Exhibit 5.

⁹ Exhibit 13.

¹⁰ *Id.*

¹¹ Exhibit 14. There was some initial confusion from Ms. Q as she was arguing about some of the issues in the August 4, 2018 order that was amended by the December 7, 2018 order. This is not a modification of any order; this is an appeal of the amended order issued on December 7, 2018.

¹² Exhibit 14.

¹³ Exhibit A. These documents were admitted over Mr. S’s objection. The parties agreed that the documents would be placed under seal.

¹⁴ The facts are based on the testimony presented by Mr. Kase, Ms. Q, and Mr. S, as well as Exhibits 1-16 and Exhibit A.

2019. He is not currently working. He supports himself through student loans, scholarships, a fellowship, and a stipend which was matched by the university for internship from summer work.¹⁵ He does not have a job offer yet following graduation and, without something lined up, he may pursue something outside of law following graduation.

Following Ms. Q's request for an administrative review, CSSD recalculated Mr. S's ongoing child support obligation as \$159.00 per month.¹⁶ CSSD calculated Mr. S's income after reviewing his child support guideline affidavit, tax returns, tuition statements, information regarding the No Name University financial assistance eligibility and costs, letter of summer internship and fellowship, information from No Name University regarding child care stipend, spreadsheet of Mr. S's expenses, and position statements from each parent.¹⁷

III. Discussion

As the person challenging CSSD's determination, Ms. Q has the burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was issued in error.¹⁸

Ms. Q argued that Mr. S's "work history, qualifications, and credentials" were miscalculated.¹⁹ Since this didn't correlate to anything specific, she was asked at the hearing to set forth every instance in which she believed CSSD was in error. Ms. Q objections and assertions are: 1) student loans should be considered income, 2) Mr. S is intentionally unemployed, and intentionally not pursuing income opportunities, so his income should be imputed, 3) Mr. S should have to pay for private health insurance for O, even though O receives healthcare through his tribal enrollment.

A. CSSD calculated Mr. S arrears and ongoing support in accordance with Civil Rule 90.3

When establishing a child support order, CSSD first determines the amount of pre-order arrears, which is the amount owed from the date the proceeding was initiated until a final administrative order is issued.²⁰ Because arrears are calculated with the benefit of hindsight, the

¹⁵ Exhibit 13 at 2

¹⁶ Exhibit 5.

¹⁷ Exhibits 3, 4, 6, 7, 8, 9, 10, 11, 12.

¹⁸ 15 AAC 05.030(h).

¹⁹ Exhibit 14.

²⁰ Civil Rule 90.3.

regulations provide that “total income from all sources is the *actual annual income* that the parent earned or received each calendar year for which arrears are sought to be established.”²¹ Civil Rule 90.3(c)(3) also establishes a minimum of \$50 per month when there is no income.

Once arrears are determined, CSSD calculates the amount of ongoing support. 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 specified deductions, such as those for federal income taxes and Social Security withholding.

As set forth above, Mr. S’s arrears were initially \$50 per month based on no income. CSSD calculated Mr. S’s total income for ongoing support by including his \$5,000.00 fellowship, plus a \$5,000.00 match from the university.²² Child support for one child is calculated at 20% of adjusted income.²³ After applicable deductions, this income resulted in an ongoing obligation of \$159.00 per month.²⁴ Mr. S’s total arrears balance rose to \$886 because CSSD applied the \$159 monthly support amount for September through December 2018.²⁵

B. Student Loans are not income for purposes of CSSD.

Ms. Q asserts that CSSD miscalculated Mr. S’s income because it did not include his loans or scholarship. This argument is incorrect as a matter of law. The commentary to Civil Rule 90.3 explains that “total income” includes benefits that would have been available for support if the family had remained intact.²⁶ It does not list loans or scholarships among its 28 illustrations of includable income. Similarly, the regulation at 15 AAC 125.030 lists 27 examples of countable income but does not include loans or scholarships. Previous administrative decisions have determined that loans and federal educational grants do not count as income for child support purposes.²⁷ Loans are not considered taxable income for good reason; they have to be repaid. And, there is no corresponding deduction in the child support calculation to account for those future repayments.²⁸ As CSSD also observed, educational scholarships generally are not taxable income. They are not funds “available for support” of the

²¹ 15 AAC 125.030(e) (emphasis added).

²² Exhibit 13 at 4; Exhibit 13 at 12; Exhibit 5 at 19; Exhibit 3.

²³ Civil Rule 90.3(a)(2)(A).

²⁴ Exhibit 13.

²⁵ Ex 13 at 13.

²⁶ Civil Rule 90.3, Commentary III.A.

²⁷ *In re B.T.*, OAH 14-0928-CSS (Comm’r of Revenue, 11/21/14), available online at <https://aws.state.ak.us/OAH/Decision/Display?rec=1730>.

²⁸ *See id.*

family within the meaning of Civil Rule 90.3, given that they may only be used to defray school expenses.

Ms. Q acknowledges that Mr. S's scholarship does not count as taxable income.²⁹ She cites no legal authority to support her claim that it should count as income in this case. She cites *In re R.K.* as a basis for considering student loans as income.³⁰ However, the decision in *In re B.T.* explicitly overruled the finding in *In re R.K.*, which had suggested that the portion of student loans used for living expenses could count as income for child support purposes. So, there is no legal basis to count either the loans or scholarship as income. As such, CSSD was correct in not including it as income for purposes of determining arrears and ongoing obligations.

C. CSSD was correct by not imputing potential income because Mr. S is not voluntarily and unreasonably unemployed

Ms. Pollack alleges that Mr. S is “voluntarily and unreasonably underemployed.” When a parent is found to be voluntarily and unreasonably unemployed or underemployed, his or her child support may be calculated by imputing the parent’s “potential income,” which is based on his or her “work history, qualifications or job opportunities.”³¹ But income is not imputed until it is determined that the obligor has engaged in voluntary conduct “for the purpose of becoming or remaining unemployed [or underemployed].”³² The Alaska Supreme Court has explained that “the relevant inquiry under Civil Rule 90.3 is ... whether a parent’s current situation and earnings reflects a voluntary and unreasonable decision to earn less than the parent is capable of earning.”³³ Absent proof of voluntary and unreasonable unemployment, the CSSD calculations are computed with actual earnings.

Here, Mr. S may be voluntarily unemployed or underemployed, because he has chosen to become a full-time student. However, under the totality of the circumstances, his decision not to work while in law school is not unreasonable. Law school is difficult and requires focus. In addition to attending classes, Mr. S studies, participates in clinic work worked at a summer

²⁹ Exhibit 13 at 3.

³⁰ *In re R.K.*, 07-0428-CSS, available at <https://aws.state.ak.us/OAH/Decision/Display?rec=664>

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

³² *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

³³ *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

internship, applies for future jobs, prepares for and interviews for prospective employment, and does moot court.³⁴ These activities improve his income potential following graduation.

As noted in the commentary to Civil Rule 90.3, “[w]hen a parent makes a career change, this consideration should include the extent to which the children will ultimately benefit from the change.”³⁵ Prior to school, Mr. S worked as an Outreach Coordinator for the City A District Attorney’s office.³⁶ Mr. S has been a full-time law student at the No Name University since 2017. His likely income following graduation from law school is substantially higher than anything he earned from his prior jobs. While his current low income is the direct result of expanding his education overall, the future benefits heavily outweigh the current small earning. This is ultimately likely to benefit O.

Since Mr. S is not unreasonably underemployed, CSSD correctly relied on his actual income to calculate his support amount. It properly denied Ms. Pollack’s request to impute potential income.³⁷

D. Mr. S is not intentionally refusing to pursue income opportunities by not applying for child care assistance from the No Name University.

The No Name University has a program available for custodial parents to receive up to \$1400 per month to cover child care expenses.³⁸ This program is designed for custodial parents who incur childcare expenses while they attend school. Mr. S does not incur such expenses, because he does not exercise physical custody of O. Ms. Q, at first, alleged Mr. S had received this monthly income but was keeping the money from her. There is no evidence to support this claim. Mr. S testified he never applied for and was not receiving childcare assistance. A CSSD representative contacted the No Name University and was told that the program is only applicable to custodial parents.³⁹ There is no other evidence suggesting that he received this money from the University.

³⁴ Exhibit 6 at 2.

³⁵ Civil Rule 90.3, Commentary III.C. *See also In re E.D.* 15-0354-CSS (Unemployment unreasonable because based on desire to avoid law enforcement); *In re B. P.* 13-1178-CSS (Unreasonably unemployed because not searching for work);

³⁶ Exhibit A.

³⁷ Civil Rule 90.3 (a)(4); *See Kowalski v. Kowalski*, 806 P.2d 1368, 1370-71 (Alaska 1991).

³⁸ Exhibit A.

³⁹ Exhibit 9.

Ms. Q also claimed that the childcare assistance funds should be attributed to Mr. S, because he said he was going to apply for the program and then didn't, so he broke an agreement. Text messages between the parents indicate that Mr. S was looking into the childcare program.⁴⁰ However, this did not commit him to receiving any benefits. CSSD was correct when it denied Ms. Pollack's request to include an additional \$16,800.00 (\$1400 per month) as income in its income calculation.

E. *A separate administrative process applies to Ms. Pollack's request for private medical insurance coverage.*

O is a tribal member, and he receives health coverage through the Indian Health Service at no cost to either parent. Ms. Q argued that Mr. S should be required to provide private insurance coverage for O, because she believes better services are available through private insurance.

When CSSD establishes a support order, it must require health care coverage for the children covered by the order if it is available to either parent at a "reasonable cost and accessible to the children."⁴¹ In doing so, it is to "consider whether the children are eligible for services through the Indian Health Service."⁴² When insurance coverage is available to each parent at a reasonable cost, the parents are expected to agree on which one will provide the coverage. If they cannot agree, they are to inform CSSD in writing and CSSD is to select the coverage that the agency determines will best meet the medical needs of the child at a reasonable cost and accessible to the child.⁴³ There is a separate process for contesting CSSD's selection, but its decision will be final for purposes of appeal to the superior court. No administrative appeal is available.⁴⁴ If Ms. Pollack would like to pursue this claim, she must initiate the separate agency process that is required.

IV. Conclusion

Mr. S's pre-order arrears and ongoing child support obligation were calculated pursuant to Civil Rule 90.3(a) without variation. Ms. Q did not show any error in the calculations.

⁴⁰ Exhibit A.

⁴¹ Civil Rule 90.3 (d)

⁴² Civil Rule 90.3 (d)(1) (A)

⁴³ See 15 AAC 125.428(b)(1).

⁴⁴ 15 AAC 125.428(c), (d).

Accordingly, CSSD's Administrative Review Hearing decision and Amended Administrative Child Support and Medical Support Order are affirmed.

Nothing in this order prevents Ms. Q from requesting a modification when Mr. S's circumstances change.

V. Child Support Order

- The Administrative Review Hearing Decision dated December 7, 2018 is affirmed;
- The Amended Administrative Child Support and Medical Support Order dated December 7, 2018, remains in full force and effect.

DATED February 25, 2019

By: Signed
Signature
Hanna Sebold
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

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 12th day of March, 2019.

By: Signed
Signature
Bruce Tangeman
Name
Commissioner
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]