

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

In the Matter of)	
)	
O B. U)	OAH No. 18-0699-CSS
_____)	Agency No. 001222473

DECISION AND ORDER

I. Introduction

U U requested establishment of an administrative child support order requiring O U to financially support the parties’ daughter, S. The Child Support Services Division (CSSD) issued an order setting Ms. U’s child support obligation for the ten-month period from July 2017 through April 2018, when S emancipated. However, it deferred the obligation after concluding that S lived with a third-party custodian during the relevant time period, not her father, and the custodian had not sought CSSD’s services.

Mr. U appealed. This decision concludes that Ms. U’s support amount should be based on her actual income, which results in a child support amount of \$490 per month, effective July 1, 2017 through April 30, 2018. Through the hearing process, Ms. U showed that she was medically unable to earn wage income, and the calculation therefore should not include imputed income. In addition, CSSD correctly deferred Ms. U’s support obligation since S lived with her adult brother during the relevant months, and he has not applied for CSSD services.

II. Background

A. Material Facts

Mr. U and Ms. U were married more than 20 years.¹ They are the parents of four children; S is the youngest.² As of July 10, 2017, when Mr. U applied for CSSD’s services, only the S was still a minor.³ S turned 18 and emancipated on April 29, 2018.⁴

Mr. U and Ms. U were divorced in 2014. The superior court issued a Decree of Divorce that went into effect on August 6, 2014.⁵ At that time, Ms. U was homeless and an active

¹ See Ex. 10, p. 2.
² Ex. 9, p. 2.
³ Ex. 1.
⁴ Ex. 3.
⁵ Ex. 9.

alcoholic, and she did not participate in the divorce proceedings.⁶ The court awarded sole legal and primary physical custody of S to Mr. U but left unresolved the determination of any child support owed by Ms. U. The court authorized Mr. U to apply for CSSD's services to obtain an administrative child support order.⁷ The order states in relevant part:

Defendant [Ms. U] shall pay plaintiff child support under the primary custody guidelines in Civil Rule 90.3, the amount of which shall be established by a separate child support order. . . . Plaintiff is authorized to apply for the assistance of the Child Support Services Division (CSSD) to collect child support from defendant.⁸

After the divorce, Mr. U remarried. His wife K has had a difficult relationship with Mr. U's children.⁹ After a particularly unpleasant event between K and some of the U children in August 2016, Mr. U and K moved out of their Town A home and into an apartment for a few months; they later moved to City B.¹⁰

Following the August event, S did not want to live with Mr. U and his wife. Mr. U felt she was old enough to choose whether to live with him or another family member, particularly since he works remotely for nine months of every year. Because of his work schedule, he recognized that he could not supervise or physically care for S, and she would primarily be living with his wife if she remained in his home.

S expressed her desire to live with her adult brother, E U.¹¹ The extent to which Mr. U arranged for E to care for S is unclear. More likely than not, Mr. U and K moved out of the home as a result of the August 2016 incident, and they did not intend to return to it for an extended period. Mr. U acquiesced in S's strong preference not to live with him and his wife. As part of a process that evolved informally, E agreed to move into the home and serve as S's custodian and caregiver.¹² The arrangement between Mr. U and E was not reduced to writing.

⁶ Ex. 9; Ex. 10; O U testimony.

⁷ Ex. 9.

⁸ Ex. 9, pp. 2-3. There was some discussion during the formal hearing as to whether the superior court ordered that no child support would be owed. This was based on log notes available through the Court System's CourtView website. CSSD later submitted the log notes (Ex. 10), which acknowledge that Mr. U did not submit a proposed child support order to the court. However, neither the log notes or the audio recordings from the divorce proceedings indicate that the court decided no support would be ordered. *See* Ex. 10, 11. Rather, the divorce decree indicates that the court left it to Mr. U to decide if and when he would apply for CSSD services to establish and enforce a child support order.

⁹ E U testimony.

¹⁰ Ex. 4, p. 1; E U testimony.

¹¹ U U testimony; E U testimony.

¹² U U testimony; E U testimony.

By early September 2016, after Mr. U and his wife had moved out, E had moved in to the Town A home.¹³ E paid rent for the house by paying the monthly mortgage.¹⁴ Mr. U paid some expenses, including certain utility bills, in recognition of his financial obligation to support S. He provided some financial help with S's car expenses, and at some point he allowed her to use his car. Mr. U also provided financial support directly to S during seven of the ten months at issue.¹⁵ For a three-month period, he did not provide any financial support and S was entirely dependent on E.¹⁶

E and S lived in the Town A home for three to four months, from September 2017 to December 2017. When E moved out in December 2017, S moved with him. S has not lived with Mr. U or his wife since late August or early September 2016. She continued to live with E as of the August 2018 hearing in this case.

B. Procedural History

Mr. U applied for CSSD services on July 10, 2017.¹⁷ CSSD issued an Administrative Order to provide financial information on August 7, 2017.¹⁸ Ms. U did not respond. CSSD issued an Administrative Child Support and Medical Support Order dated November 30, 2017, setting Ms. U's ongoing support obligation at \$621 per month, effective December 1, 2017, with pre-order arrears of \$490 per month for the months of July 2017 through November 2017.¹⁹ The order was served on Ms. U on March 25, 2018.²⁰

Ms. U timely requested an administrative review, asserting that S did not live with Mr. U and that E was caring for her and providing for her needs.²¹ She also explained ongoing medical problems and recent surgeries that have prevented her from working or earning income.

¹³ E U testimony; U U.

¹⁴ U U testimony.

¹⁵ *Id.* Mr. U testified that, with the exception of a three-month period when he provided no financial support directly to S, he typically gave her \$100 per week by transferring money into a bank account he shares with her. He submitted bank records showing transfers of varying amounts on numerous dates between December 2017 and April 2018. No regular pattern was apparent for the transfer dates or amounts, but the transfers totaled more than \$4,000 over that time period. *See* U submission to record received 7/26/18. This supports his testimony that he provided direct financial support to S during most of the time period at issue in this case.

¹⁶ E U testimony.

¹⁷ Ex. 1.

¹⁸ Ex. 2.

¹⁹ Ex. 3.

²⁰ Estes testimony; CSSD brief, p. 1.

²¹ Ex. 4.

CSSD issued an Administrative Review Hearing Decision on June 13, 2018.²² For the support calculation, it affirmed the calculations done in the earlier order. It based Ms. U's July through November 2017 support obligation on her actual income -- her native corporation dividends and the PFD, resulting in a \$490 monthly amount. For December 2017 through April 2018, CSSD added imputed income from a minimum wage job (\$9.80 per hour) working 20 hours per week. This resulted in an ongoing obligation of \$621 per month.²³

Based on the information provided by both parents during the administrative review hearing, CSSD agreed that Mr. U did not exercise custody of S between July 2017 and April 2018. Instead, E was serving as a third-party custodian. CSSD therefore determined that child support from Ms. U is not owed to Mr. U. It deferred the child support obligation because E U had not requested CSSD's services.²⁴

Mr. U requested a formal hearing.²⁵ He argued that he has provided significant financial support for S, and he will pay for her upcoming college expenses. He asserted that Ms. U has not met her financial or other responsibilities, and she has manipulated S into giving her money. He asked for an order requiring Ms. U to financially support S.

The formal hearing took place by telephone on July 31, 2018. It was audio-recorded. Mr. U and Ms. U each appeared, represented themselves, and testified on their own behalf. Child Support Specialist Brandi Este represented CSSD and testified for CSSD. At CSSD's request, E U also testified. The record remained open after the hearing, so the parties could submit a copy of the U's divorce decree and clarify the terms of any superior court orders regarding child support. All submitted documents were admitted to the record, which closed on August 8, 2018.

III. Discussion

In child support matters, the person who files an appeal bears the burden of proof.²⁶ Mr. U filed this appeal, so he must prove by a preponderance of the evidence that the Administrative

²² Ex. 5.

²³ Ex. 3; Ex. 5.

²⁴ Ex. 5.

²⁵ Ex. 6.

²⁶ 15 AAC 05.030(h).

Review Hearing Decision dated June 13, 2018 is incorrect and the Administrative Child and Medical Support Order dated November 30, 2017 should be adjusted.²⁷

A parent is obligated both by statute and at common law to support his or her children.²⁸ In cases establishing a support obligation for the first time, CSSD collects child support from the date the custodian requested child support services or the date that public assistance or state-sponsored foster care was provided on behalf of the child.²⁹ In this case, Mr. U requested services in July 2017, so that is the first month in which Ms. U could be obligated to pay child support through CSSD.

A. Child Support Order and Calculation

CSSD provides child support services to a child, the custodian of the child, and the noncustodial parent of the child, as well as specified others.³⁰ Through the administrative hearing process, it has become clear that Mr. U was a noncustodial parent during the relevant time period in this case. Though he provided undisputed financial support, S did not live in his household or receive physical care from him. S's adult brother provided her a home and met her daily living needs. He acted as her third-party custodian.

As a noncustodial parent, Mr. U is entitled to request establishment of a child support order.³¹ Pursuant to the parents' divorce decree, Ms. U's support obligation is to be calculated based on the primary custody formula at Civil Rule 90.3(a). Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated from his or her "total income from all sources," minus specified mandatory deductions. When it is calculating support for a prior time period, as it is in this case, CSSD is to base the calculation on the parent's actual income during the relevant period unless it finds that the parent was voluntarily and unreasonably unemployed.³²

Here, neither parent presented evidence disputing CSSD's determination that Ms. U received native corporation dividends totaling \$34,200 during 2017, plus the \$1,100 PFD, or that she is likely to receive the same income during 2018.³³ This income resulted in a support

²⁷ 2 AAC 64.290(e).

²⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

²⁹ 15 AAC 125.105(a)(1)-(2).

³⁰ 15 AAC 125.800(a).

³¹ *Id.*

³² 15 AAC 125.050(b).

³³ *See* Ex. 3, p. 8.

amount of \$490 per month for one child.³⁴ CSSD initially concluded that Ms. U was voluntarily and unreasonably unemployed after November 2017, and it imputed income from a part-time job when it calculated the support amount for December 2017 through April 2018. However, through the hearing process, Ms. U testified and submitted evidence from her medical providers showing that she has been medically unable to work since at least April 2017 due to repeated knee surgeries and ongoing problems with her knees.³⁵ She met her burden of persuasion to show that her lack of recent wage income is not unreasonable. CSSD agreed, and its post-hearing submission removed the wage income component from the proposed child support order.³⁶

Based on the evidence in the record, CSSD correctly calculated Ms. U's July 2017 through November 2017 support amount at based on her actual 2017 income, resulting in a \$490 monthly support amount. Ms. U showed that this calculation and support amount also should apply to December 2017 through April 2018.

B. *Deferral of Obligation*

Normally, CSSD's decision to defer an administrative support order is not subject to a formal administrative appeal; it is a final agency determination appealable to the superior court.³⁷ However, the Administrative Review Hearing Decision did not inform Mr. U of his appeal right, and the administrative appeal form that was attached to the hearing decision suggested an administrative appeal was available.³⁸ This decision therefore addresses the issue. Once this matter becomes final, Mr. U may seek judicial review of the deferral issue subject to the rules and timeline identified in the adoption order.

A child support order establishes a relationship by which the custodian of the child is the administrator for purposes of using the child support on behalf of the child.³⁹ For this reason, CSSD enforces child support orders on behalf of the child's custodian.⁴⁰ Between September 2016 and April 2018 when S emancipated, E served as her third-party custodian. Though Mr. U provided some financial support for S (and directly to S) during this time, he did so in his

³⁴

Id.

³⁵

Ex. 4; O U testimony.

³⁶

CSSD submission to record dated 8/6/18.

³⁷

15 AAC 125.870(h).

³⁸

See Ex. 5; Ex. 6.

³⁹

AS 25.27.060(a).

⁴⁰

AS 25.27.080(b).

capacity as a noncustodial parent paying child support, even though that support was not calculated pursuant to Civil Rule 90.3. He has not shown that Ms. U's child support obligation is owed to him.⁴¹ Rather, it is owed to E.⁴² Mr. U argued that Ms. U should be required to pay the ordered amount to S directly. However, this request is inconsistent with Alaska's legal framework for child support enforcement.

In a situation where the party requesting child support no longer maintains physical custody of the child, and the third-party custodian has not applied for CSSD services, the agency is obligated to defer any support accruing under its child support order.⁴³ It correctly did so in this case.

IV. Conclusion

Based on the information developed through the administrative review and formal hearing processes, CSSD correctly calculated Ms. U's 2017 child support amount under the primary custody formula at Civil Rule 90.3(a), based on Ms. U's native corporation dividends and PFD. This resulted in a \$490 monthly amount, effective July 1, 2017. Ms. U showed that her medical condition has precluded employment and wage income, so the \$490 amount should carry forward through April 2018, when S emancipated. Because Mr. U did not exercise physical custody of S during the months in question and her third party custodian has not applied for services, CSSD appropriately deferred payment on the obligation.

V. Child Support Order

- Ms. U is liable for child support for S in the amount of \$490 per month, effective July 1, 2017 through April 30, 2018, when S emancipated;
- All other provisions of the Administrative Child Support and Medical Support Order dated November 30, 2017, remain in full force and effect;
- Ms. U's support obligation is deferred for July 2017 through April 2018, since S was in the custody of a third-party custodian who has not requested services.

⁴¹ See Civil Rule 90.3(i); Civil Rule 90.3 Commentary IV (custody is determined based on the child's physical presence).

⁴² When a child lives with a third party, both non-custodial parents may be ordered to pay child support. Civil Rule 90.3(i); *Schuyler v. Briner*, 13 P.3d 738, 742 (Alaska 2000) (both parents ordered to pay support to adult sibling of the child who exercised physical custody, despite divorce decree awarding sole legal and physical custody to one parent).

⁴³ 15 AAC 125.870(d).

DATED: August 21, 2018.

By: Signed
Signature
Kathryn A. Swiderski
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 4th day of September, 2018.

By: Signed
Signature
Lawrence A. Pederson
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.]