

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

In the Matter of)	
)	
Q N)	OAH No. 19-0058-CSS
<hr style="width: 80%; margin-left: 0;"/>)	Agency No. 001200224

DECISION AND ORDER

I. Introduction

The Child Support Services Division (CSSD) issued an order establishing Q N’s child support obligation for three children, Q, E, and B. After an administrative review hearing, CSSD issued an Amended Administrative Child Support and Medical Support Order that set the ongoing obligation at \$206 per month. It also set pre-order arrears totaling \$1,326 for the period from May 2018 through January 2019. Ms. N appealed.

In her appeal request, Ms. N wrote that she cannot work more than 10 hours per week due to health problems. However, she did not appear at the hearing or respond to repeated efforts to contact her. As a result, she did not meet her burden to show that the child support order should be adjusted. Therefore, CSSD’s administrative review hearing decision is affirmed, and the Amended Administrative Child Support and Medical Support Order dated January 4, 2019 remains in full force and effect.

II. Facts

A. Material Facts

Q N is the legal mother of three children: Q, age 13, E, age 8, and B, age 6. Maternity is not contested. The children have been in nonfederal foster care since May 2018.¹

Ms. N’s address of record is in Anchorage. However, in recent months, she has lived and worked in Illinois. According to information provided by her former employers, Ms. N has earned very little wage income in the last several years. In the fourth quarter of 2017, she earned \$857. During the first half of 2018, she earned \$2,974.² These likely are Alaska wages. It is not clear whether Ms. N earns any income from self-employment. Such income would not appear in the Department of Labor & Workforce Development’s database of employer-reported wages.

¹ CSSD pre-hearing brief, p. 1.
² Exhibit 7.

Ms. N apparently moved to Illinois in the spring or summer of 2018 and began working there as a home health aide. It is not clear when she started this job. The record includes two bi-weekly paystubs from the job, covering the pay periods from September 3-16, 2018, and from September 17 – 30, 2018.³ As of September 30th, Ms. N’s year-to-date gross pay from her home health aide job totaled \$4,510.21. Her paychecks show that she earns \$10.78 per hour and generally worked ten hours per week (20 hours per paycheck) in September.

B. Procedural History

CSSD received a request to establish a child support order effective in May 2018, since that is the month Q, E, and B were placed in foster care.⁴ It issued an administrative order to provide financial information on June 6, 2018.⁵ Ms. N submitted the two paystubs and a document showing Social Security disability income she receives on behalf of U N.⁶

On November 5, 2018, CSSD issued an Administrative Child Support and Medical Support Order that set Ms. N’s ongoing support amount and pre-order arrears at \$482 per month.⁷ CSSD calculated this amount based on the Social Security income it believed Ms. N received, plus \$5,779.57 in gross annual wage income.⁸ The order was personally served on Ms. N on November 13, 2018.⁹

Ms. N requested an administrative review hearing.¹⁰ Her written request clarified that she does not receive any Social Security income; the payments are for a disabled family member. She asserted that she earns less than \$400 per month as a home health aide, which is her only income.¹¹

The administrative review hearing took place on December 27, 2018, but Ms. N did not appear.¹² On January 4, 2019, CSSD issued the administrative review hearing decision and Amended Administrative Child and Medical Support Order that are at issue in this appeal.¹³ To calculate the 2018 child support amount, CSSD removed the Social Security income and

³ Exhibits 2, 4.

⁴ CSSD pre-hearing brief; CSSD hearing representative statement.

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ Exhibit 3.

⁸ Exhibit 3, p. 8.

⁹ Exhibit 3.

¹⁰ Exhibit 4.

¹¹ *Id.*

¹² Exhibit 5.

¹³ *Id.*

determined Ms. N's 2018 wage income by extrapolating from the paystubs she submitted. It concluded that Ms. N's 2018 gross wages totaled \$5,835.23. After allowable deductions, including a deduction for Illinois state taxes, this income resulted in a monthly support amount of \$140 for three children, effective May 2018 through December 2018.

To calculate the 2019 and ongoing support amount, CSSD concluded that Ms. N is voluntarily and unreasonably underemployed. It based the calculation on potential income from a minimum wage job at Illinois' \$8.25 hourly rate and an average 20-hour weekly work schedule. This resulted in gross annual wages of \$8,580. After deductions, including a deduction for state taxes, this income resulted in a support amount of \$206 per month for three children, effective January 1, 2019.

Ms. N appealed, arguing that she cannot work more than she currently does due to her health conditions.¹⁴ In an email to CSSD on January 16, 2019, she wrote: "[I] have mobility issues, migraines, diabet[es], fybro [sic], hearing loss, adhd, panic attacks, and more."¹⁵ She indicated that she had an upcoming appointment with her doctor on February 13, 2019. She stated her intention to get her doctor to write a letter clarifying that she cannot work more than 10 hours per week.

The formal administrative hearing took place on February 6, 2019. It was audio-recorded. Child Support Specialist Patrick Kase appeared telephonically and represented CSSD. Ms. N's telephone number of record is no longer in service, and she did not appear. She did not receive the Notice of Hearing that was sent by certified mail to her address of record, since it was returned to the Office of Administrative Hearings (OAH) as undeliverable. OAH staff sent Ms. N an email at the address she used in January 2019 to communicate with CSSD, informing her of the hearing and asking her to provide her contact information. She did not respond.

After the hearing, the undersigned issued an order that informed Ms. N of her opportunity to request a rescheduled hearing. It also held the record open until February 21, 2019, and it explained how to submit documents to OAH. This provided Ms. N an opportunity to contact OAH, request another hearing, and/or submit a letter from her doctor. The order was served on Ms. N at the same email address she used on January 19, 2019 to appeal the amended child

¹⁴ Exhibit 6.

¹⁵ *Id.*

support order.¹⁶ However, she did not contact OAH or show good cause for her failure to appear. She also did not submit any documents. This decision is issued based on the evidence in the record.¹⁷ All submitted documents were admitted to the record.

III. Discussion

Ms. N was provided reasonable and appropriate notice of the formal hearing pursuant to 15 AAC 05.030(g) and 15 AAC 125.810(a). The hearing notice was sent by certified mail to her address of record. Ms. N did not receive the notice because she has not kept her mailing address current, as she is required to do. Multiple efforts also were made to contact Ms. N by telephone and by email to advise her of the hearing and of her ability to request a rescheduled date. To the extent the telephone number and email address in CSSD's file are no longer valid, this too is Ms. N's responsibility. However, since Ms. N was corresponding with CSSD from the same email address in mid-January 2019, that address likely is still active and she likely received actual notice of the hearing and of the post-hearing order.

As the person who filed the appeal, Ms. N bears the burden of proof to show by a preponderance of the evidence that CSSD's amended child support order is incorrect.¹⁸ Her written appeal challenges only the income determination.

A parent is obligated both by statute and at common law to support his or her children.¹⁹ In cases establishing a new support obligation, CSSD collects child support from the date the custodial parent requested child support services or the date public assistance or foster care was initiated on behalf of the child.²⁰ Here, foster care was initiated in May 2018, so that is the month Ms. N's obligation to support Q, E, and B through CSSD begins.

Setting child support is largely a predictive function.²¹ Child support awards are set under Civil Rule 90.3 based on a formula that starts with a determination of the noncustodial parent's total income from all sources. In this, CSSD is to use the best information available. When a parent's actual income history is not available, the determination can be based on other information, including the parent's job skills, training, work history, and the average wages

¹⁶ See Exhibit 6.

¹⁷ AS 25.27.170(f); 15 AAC 05.030(j).

¹⁸ 15 AAC 05.030(h).

¹⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

²⁰ 15 AAC 125.105(a)(1)-(2).

²¹ *Holmes v. Holmes*, 414 P.3d 662, 668 (Alaska 2018) (citing *Potter v. Potter*, 55 P.3d 726, 730 (Alaska 2002)).

earned by others in the parent's same occupation.²² When a parent is voluntarily and unreasonably unemployed or underemployed, the income determination is based on potential or imputed income, which is set with reference to the parent's work history, qualifications, and job opportunities.²³ The obligor-parent bears the burden of proving his or her income or earning capacity.²⁴

Ms. N has not shown that CSSD erred in determining her actual 2018 income or her expected 2019 income. The evidence supports both determinations. The 2018 amount was set based on incomplete information showing Ms. N's actual income. CSSD reasonably extrapolated from that information to calculate her gross 2018 wages. It did not include any PFD income. The 2019 and ongoing calculation was based on imputed income from a half-time job paying \$8.25 per hour, resulting in annual gross income of \$8,580.²⁵ CSSD adopted this calculation because Ms. N's minimal wage income in recent years raises the issue of voluntary and unreasonable underemployment. CSSD established a prima facie case, and the burden of persuasion therefore shifted to Ms. N to show that, for purposes of setting her child support obligation, she should not be expected to earn \$8,580 in gross annual wage income.²⁶

In deciding whether a parent is voluntarily and unreasonably underemployed, the tribunal is to consider the totality of the circumstances, including factors such as whether a parent's reduced income is temporary, whether it is "the result of economic factors or of purely personal choices," the children's needs, and the parent's needs and financial abilities."²⁷ Ms. N is employed and earning wage income, so the evidence is that she can work. She currently earns more than minimum wage but she works fewer hours than CSSD included in its calculation.

Ms. N argued that her significant health problems prevent her from working more than 10 hours per week. Her appeal request reflects an understanding that she needed to submit additional information or other documentation to support this claim. The record remained open for more than a week after Ms. N's scheduled doctor appointment, which provided her an opportunity to submit a letter from her doctor. The timing also provided her opportunities to

²² See 15 AAC 125.050(c).

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

²⁴ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

²⁵ \$8.25 x 20 hours/week x 52 weeks = \$8,580.

²⁶ *Farr v. Little*, 411 P.3d 630, 635 (Alaska 2018).

²⁷ *Id.* at 634; *Sawicki v. Haxby*, 186 P.3d 546, 550 (Alaska 2008); *Dunn v. Dunn*, 952 P.2d 268, 270 (Alaska 1998).

contact OAH or CSSD, to inquire about the status of her appeal, or to request a rescheduled hearing date. When the record closed on February 21st, and as of the date of this decision, Ms. N had not contacted OAH or submitted any information from her medical provider.

As a result, she has not met her burden to show she can only work 10 hours per week. Based on the totality of the evidence in the record, CSSD correctly determined that Ms. N's potential 2019 wage income is \$8,580. After deductions, this income results in a monthly support amount of \$206 per month for three children, effective January 1, 2019 and ongoing.

IV. Conclusion

Ms. N did not meet her burden to show errors in CSSD's determination of her child support obligation. CSSD established her obligation under the primary custody formula at Civil Rule 90.3(a) without variation. Its calculations are affirmed.

V. Child Support Order

- The Administrative Review Hearing decision dated January 4, 2019 is affirmed;
- The Amended Administrative Child and Medical Support Order dated January 4, 2019, is affirmed and remains in full force and effect.

DATED: March 1, 2019.

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 18th day of March, 2019.

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.]