

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

In the Matter of)	
)	
T N. C)	OAH No. 18-1263-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001225599

DECISION AND ORDER

I. Introduction

The Child Support Services Division (CSSD) issued an administrative order establishing T C’s child support obligation for his two children with D C. Its Amended Administrative Child and Medical Support Order set the ongoing amount at \$272 per month based on equal shared custody. It also set pre-order arrears for February 2018 through November 2018.¹

Through the evidence produced in the formal hearing process, Mr. C showed that the order should be adjusted. After applicable deductions, the parents’ expected 2019 incomes and reciprocal child support obligations result in a monthly support amount of \$44 for two children based on equal shared custody, owed by Mr. C. This obligation is effective January 1, 2019 and ongoing. Mr. C’s obligation for June 2018 through December 2018 is also based on equal shared custody. For that time period, the parents’ income differences result in a support amount of \$112 per month. Mr. C’s support amount for February 2018 through May 2018 is based on primary custody and is set at \$619 per month.

The Amended Administrative Child Support and Medical Support Order dated October 31, 2018 is adjusted to reflect these obligations.

II. Facts and Proceedings

T C and D C are the parents of K, age 6, and J, age 5. Both parents live in Anchorage. Since June 2018, they have exercised shared custody on a 50% (mother), 50% (father) basis. Prior to that, Ms. C exercised primary physical custody.

A. Procedural History

CSSD initiated an action to establish Mr. C’s support obligation after receiving notice that public assistance was paid on the children’s behalf beginning in February 2018.² Mr. C’s name is on each child’s birth certificate. He does not contest paternity.

CSSD issued an Administrative Order to Provide Financial and Medical Insurance

¹ Exhibit 5.
² CSSD Pre-Hearing Brief, p. 1.

Information on March 12, 2018.³ Mr. C did not provide his income information. On July 21, 2018, CSSD issued an Administrative Child Support and Medical Support Order that set his ongoing obligation based on primary custody with Ms. C.⁴ Mr. C requested an administrative review hearing.⁵

In the review hearing process, the parents agreed they began sharing custody equally in June 2018, when Mr. C moved from Oregon to Alaska.⁶ Based on their respective incomes and allowable deductions, the review concluded that Mr. C's support amount should be \$272 per month, effective June 2018 and ongoing. It found that his pre-order arrears for February 2018 through May 2018 should be \$749 per month.⁷ On October 31, 2018, CSSD issued an Amended Administrative Child and Medical Support Order reflecting these amounts.⁸ Mr. C appealed.⁹ He argued that CSSD overstated his income and understated Ms. C's.

The formal hearing took place on January 7, 2019. It was audio-recorded. Mr. C appeared in person and represented himself. He was assisted by E T. Ms. C appeared telephonically and represented herself. Both parents testified. Child Support Specialists Brandi Estes and Patrick Kase appeared in person and represented CSSD. The record remained open after the hearing so Mr. C could submit evidence clarifying his actual 2018 income. CSSD then submitted an updated position statement and revised child support calculations for 2018 and 2019. The parents were provided an opportunity to respond, but neither did so. All submissions were admitted to the record, which closed on February 5, 2019.

B. Relevant Factual Background

Mr. C is a military veteran. He worked in an Army Airborne unit as a signal support specialist. He retired in 2017 due to disability; he is rated 90% disabled.¹⁰ Mr. C experiences chronic pain in his shoulders and back, and his legs are sometimes unsteady. He walks with a cane. He cannot stand for more than a few hours at a time. He cannot lift or carry significant weight. He also experiences some memory and information-processing problems.

In 2018, Mr. C received military disability income of \$2,221.29 per month, or \$26,655.48

³ Exhibit 1.
⁴ Exhibit 2.
⁵ Exhibit 3.
⁶ Exhibits 4, 5.
⁷ Exhibit 5
⁸ Exhibit 5, pp. 4-13.
⁹ Exhibit 6.
¹⁰ T C testimony; Exhibit 10; T C submission received 1/3/2018.

for the year. He did not receive any other military income. He was not eligible for the 2018 PFD, and he will not be eligible for the 2019 PFD. In 2019, his disability income will increase to \$2,283.19 per month, or \$27,398.28 for the year.¹¹

Mr. C does not have a college degree or any certifications that make future employment predictable in a particular industry. At the time of the hearing in this case, he was about to begin a vocational rehabilitation program that would help him assess his options. He is considering returning to school but has no definite plans. Since leaving the Army, he has worked a few part-time jobs, seeking both to re-integrate into civilian life and to find work he can successfully perform with his health problems. In 2018, he tried working part-time at an Employer A store in Oregon and later at an Employer B in Alaska. However, both jobs required too much standing or lifting, so they were quite short-term. He earned \$638 from the first employer and \$299.80 from the second.¹² Mr. C currently works two hours per day at his children's school. He earns \$10 per hour or \$100 per week.

Ms. C worked for two different employers during the first half of 2018, earning gross wages of \$2,253.¹³ She was then unemployed for an extended period. During that time, she received unemployment benefits totaling \$5,100.¹⁴ She also needed two weeks off in August 2018 because she was recuperating from knee surgery. Sometime after that, Ms. C started her current job. She works in an administrative capacity for an electrical company. She earns \$15 per hour but often does not work a 40-hour week. She earns overtime pay when she works outside of normal business hours. She is only paid for hours worked; she does not receive any pay for holidays or vacation days. Her final 2018 paystub shows total wages of \$14,528.30 from her current employer.¹⁵ Ms. C's combined 2018 gross wages from all employers is \$16,781.30.¹⁶

In 2019, Ms. C expects to stay at her current job. She anticipates working between 35 and 42 hours per week. Because her weekly schedule varies, this decision adopts a 38-hour average workweek as a reasonable compromise. Ms. C sometimes works only 35 hours per week, but

¹¹ Exhibit 10.

¹² Exhibit 7.

¹³ Exhibit 7, p. 1.

¹⁴ *Id.*

¹⁵ This includes regular pay of \$13,882.50 plus overtime of \$645.80. Cassandra C testimony. This information is consistent with the pay reported in Ms. C's 12/21/18 paystub. See T C submission received 1/22/19.

¹⁶ $\$14,528.30 + \$2,253 = \$16,781.30$. CSSD's post-hearing submission calculated Ms. C's 2018 wages at \$22,391.31. This likely double-counts \$5,610.01 earned from her current job during the third quarter of 2018. That income is shown on the affidavit at Exhibit 7, but also captured in Ms. C's year-to-date pay on her final 2018 paycheck.

other weeks she works longer hours, or she may earn an hour or two of overtime. In addition, this decision calculates her annual wages based on work over 48 weeks of the year, since Ms. C is not paid for holidays, sick days, or vacation days. This results in expected 2019 gross wages of \$27,360.¹⁷

III. Discussion

As the person who filed the appeal, Mr. C has the burden of proving by a preponderance of the evidence that the Amended Administrative Child and Medical Support Order dated October 31, 2018 requires adjustment.¹⁸ He met this burden.

A parent is obligated by statute and at common law to support his or her children.¹⁹ When public assistance is paid on behalf of a child to whom a noncustodial parent owes a duty of support, the parent (called an “obligor”) is liable to the state for the assistance provided, up to the amount set in a child support order.²⁰ In cases established administratively by CSSD, the agency collects support from the date the custodial parent requested child support services or the date public assistance was initiated on behalf of the child.²¹ Here, public assistance was provided for K and J in February 2018, so that is the month Mr. C’s obligation to support them through CSSD begins.

Under Civil Rule 90.3, a parent’s child support obligation is calculated based on his or her total income from all sources during the period for which the support is being paid.²² By its nature, this determination can be a somewhat uncertain endeavor, since the relevant calculation includes an assessment of expected future income.²³ Once a parent’s total income from all sources is determined, Civil Rule 90.3 calculates the parent’s adjusted annual income by subtracting specified deductions, such as for federal income taxes and Social Security/Medicare withholding.²⁴

When parents exercise shared custody, each parent’s adjusted annual income and child support obligation is first determined under the primary custody formula. That information is

¹⁷ \$15/hour x 38 hours/week x 48 weeks/year = \$27,360.

¹⁸ 15 AAC 05.030(h).

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

²⁰ AS 25.27.120(a).

²¹ 15 AAC 125.105(a)(1)-(2).

²² *See also* 15 AAC 125.020, 15 AAC 125.030.

²³ Civil Rule 90.3, Commentary III.E.

²⁴ *See* Civil Rule 90.3(a)(1). Other deductions include, for example, work-related childcare expenses, retirement plan contributions, and health insurance premiums for the paying parent.

then applied in the shared custody formula.²⁵ Depending on the percentage of time each parent exercises overnight custody, the parent obligated to pay child support will have a somewhat lower monthly support amount than in a primary custody scenario.

A. Mr. C's 2018 and 2019 obligations under the primary custody formula

Mr. C's 2018 income includes his VA disability income of \$26,655.48 and wages totaling \$937.80 from his two part-time jobs. He did not receive any military income in 2018 other than his disability benefits.²⁶

After applicable deductions, including a deduction for Oregon state taxes on his part-time job there, Mr. C's 2018 adjusted annual income is \$27,490.20. This income results in a child support obligation of \$619 for two children under the primary custody formula.²⁷ Ms. C exercised primary custody from February through May 2018, so Mr. C's support obligation is \$619 for each of those months.

Mr. C's expected 2019 income includes VA disability benefits totaling \$27,398.28. He also is likely to earn wage income from his work at the school. Assuming he earns \$100 per week and works for 18 weeks during the spring semester, this results in gross wages of \$1,800. He will not receive the PFD. After deductions, his adjusted annual income is \$29,198.28, which results in a primary custody support amount of \$654 for two children.²⁸ This is a \$35 or 6% change from Mr. C's 2018 primary custody obligation.²⁹ Because the change is less than 15%, no material change of circumstances is shown. Therefore, Mr. C's 2018 income carries forward to the 2019 calculation.

B. Ms. C's 2018 and 2019 obligations under the primary custody formula

In 2018, Ms. C's gross wages from all employers totaled \$16,781.30. She also received unemployment income of \$5,100 and the PFD. After applicable deductions, her adjusted annual income of \$20,829.18 results in a child support obligation of \$469 for two children under the primary custody formula.³⁰

In 2019, Ms. C's expected gross wages are \$27,360, plus she will receive the PFD. After

²⁵ Civil Rule 90.3(b)(1); *see also* Attachments B-F.

²⁶ *See* T C submission received 1/22/19; T C testimony; Exhibit 10. An additional \$7,754 in 2018 military pay that appeared in a database available to CSSD likely reflects a reporting error. CSSD agreed it should not be included in the calculation.

²⁷ *See* Exhibit 9, p. 1.

²⁸ Attachment A.

²⁹ $(\$654 - \$619)/\$619 = .06$.

³⁰ Attachment B.

deductions, her adjusted annual income, \$24,862.24, results in a primary custody support amount of \$559 for two children.³¹ This is a \$90 or 19% change from the 2018 amount.³² Therefore, this adjusted income figure will be used to determine the 2019 and ongoing child support amount.

Ms. C is the sponsor for the children's annual PFDs. Mr. C argued that those payments should be attributed to her as income. However, payments received on behalf of the children are not countable income of the sponsoring parent for purposes of calculating child support. Therefore, the children's PFDs are excluded.

Mr. C also expressed dissatisfaction with the public assistance Ms. C has received on behalf of both children, given that the parents share equal custody. Means-based assistance is not included as income in calculating child support, so this issue is not relevant here. Mr. C can discuss these concerns with the Division of Public Assistance.

C. Shared Custody Calculations

Under the shared custody formula and the parties' 50/50 custody arrangement, the parents' respective 2018 incomes and reciprocal support obligations result in a support amount of \$112 per month for two children, owed by Mr. C.³³ This obligation applies to the period from June 2018 through December 2018.

For 2019 and ongoing, the parents' incomes and reciprocal support obligations result in a support amount of \$44 per month for two children (\$33 for one child), also owed by Mr. C.³⁴ This amount is effective starting January 1, 2019.

IV. Conclusion

Through the formal hearing process, Mr. C met his burden to show the Amended Administrative Child Support and Medical Support Order should be adjusted. The above support obligations for K and J were calculated under Civil Rule 90.3(a) and (b) without variation. They are supported by the evidence and should be adopted.

V. Child Support Order

- Mr. C's support amount for K and J is \$44 per month for two children (\$33 for one child), effective January 1, 2019 and ongoing, based on equal shared custody;
- Mr. C's support amount for two children is \$112 per month, effective June 1, 2018 through December 31, 2018, based on equal shared custody;

³¹ Attachment C.

³² $(\$559 - \$469)/\$469 = .19$.

³³ Attachment D.

³⁴ Attachments E, F. The one-child obligation is rounded to \$33 from \$32.85.

- Mr. C’s support amount for two children is \$619 per month, effective February 1, 2018 through May 31, 2018, based on primary custody exercised by Ms. C;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated October 31, 2018 remain in full force and effect.

DATED: February 7, 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 22nd day of February, 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.]