

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

In the matter of:)

N S. G)

) OAH No. 14-0987-CSS
) CSSD Case No. 001185573
)

DECISION AND ORDER

I. Introduction

The obligor is N S. G and the custodian is E G. They share custody of the two obligee children, M, 6 years old, and H, 4 years old. Ms. G appealed the Modified Administrative Child Support and Medical Support Order issued April 29, 2014. This order ordered Mr. G to pay a monthly support obligation for two children in the amount of \$482.

A hearing was held on July 23, 2014 and continued to August 20, 2014. Mr. G participated by telephone in both hearings. Ms. G participated by telephone in the first hearing, but could not be reached for the supplemental hearing and thus did not participate.¹ She did file a written statement and medical records on August 25, 2014. These records were considered and the parties were provided with a Notice of Proposed Child Support Amount (August 27, 2014). James A. Pendergraft, Child Support Specialist, represented CSSD.

Based on all the evidence, and using a shared custody calculation, Mr. G's monthly child support for two children should be \$837 per month effective April 1, 2014 and ongoing. This is the amount of child support noticed.

II. Facts

The parties have shared custody of the children. Ms. G requested modification of the existing order. Acting on this request, on April 29, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order setting Mr. G's support obligation at \$482 per month for two children effective April 1, 2014.² Ms. G appealed, arguing that CSSD

¹ Ms. G did not answer a call placed to her telephone number at the time of the hearing. She subsequently requested the record be reopened to accept additional evidence. The request was granted and Ms. G's information was considered in reaching this decision.

² Exhibit 6.

overstated her income and gave Mr. G a deduction for a prior child that he should not have received.³

The initial hearing on appeal convened July 23, 2014. At that time, Mr. G requested a financial hardship variance, and Ms. G claimed she was suffering from medical issues that prevented her from returning to the workplace. After a brief discussion regarding the type of evidence relevant to the arguments raised by Mr. and Ms. G and helpful to the tribunal, the Gs agreed that a supplemental hearing was appropriate.

The supplemental hearing would allow Ms. G the opportunity to submit medical records in support of her claim that she is medically precluded from working and Mr. G the opportunity to submit evidence in support of his request for a hardship variance. It was agreed that any additional evidence would be filed by August 7, 2014, and CSSD would have until August 14, 2014 to consider the additional evidence and revise its calculation if appropriate.

Neither party submitted additional evidence; CSSD did make some adjustments to its calculation. For example, CSSD revised Ms. G's adjusted gross income to take into consideration that, as a state employee, she did not pay social security.

The supplemental hearing was held and Ms. G was called at the appointed time at the number she provided. A voicemail message was left informing her of the hearing. The hearing proceeded as scheduled and the record closed at its conclusion. On August 25, 2014, Ms. G submitted written argument, including her tax return and a work status from her treating physician dated July 29, 2014. Ms. G's work status does not state she cannot work; rather, it states that she was released to light duty/limited duty work with restrictions likely to continue for 4-6 weeks post-operatively. There is no other medical information in the file.

Using the information submitted on August 25, 2014 and Ms. G's reported earnings to the Department of Labor, she earned \$5,654 in 2013 and \$6,809.25 in the first half of 2014. The medical records provide that she was released to light duty on July 29, 2014 and is awaiting surgery. After surgery there will be a 4-6 week recovery period. The restrictions imposed and the impending surgery make it unlikely that she will be able to obtain employment in the last six months of 2014. Ms. G's present condition is expected to be temporary, so she will be returning to the workforce.

³ Exhibit 7.

A notice was issued informing the parties that the record as a whole supported a shared custody calculation that results in Mr. G having a monthly child support obligation for two children in the amount of \$837 per month, effective April 1, 2014 and ongoing.⁴ A notice was issued stating that this amount of support would be adopted unless one or both of the parties filed an objection no later than September 8, 2014.⁵ Neither party filed a response.

III. Discussion

Ms. G filed an appeal and requested a formal hearing. She has the burden of proving by a preponderance of the evidence that CSSD's calculations are incorrect.⁶

A parent is obligated both by statute and at common law to support his or her children.⁷ 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" minus mandatory deductions such as taxes and Social Security. When calculating ongoing child support, determining an obligor's annual income for purposes of child support is "necessarily... speculative because the relevant income figure is expected future income."⁸ However, child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct.

Because this is a shared custody calculation, Ms. G's income is considered. In a shared custody calculation, overstating or understating one parent's income will not achieve the purpose of this proceeding. Using Ms. G's actual income and current physical condition, her anticipated income for 2014 is \$6,809.25. When calculated pursuant to Civil Rule 90.3(a), her monthly child support obligation for two children is \$156 per month.⁹

Using this figure and the figure calculated pursuant to Civil Rule 90.3(a) for Mr. G,¹⁰ to calculate the shared custody support obligation, Mr. G's monthly child support obligation for two children should be \$837 per month effective April 1, 2014 and ongoing.¹¹ This amount is correct because it is based on Mr. G's actual income, minus mandatory deductions, and includes deductions for union dues and retirement, in addition to a deduction for supporting a prior child

⁴ Attachment B.

⁵ Notice of Proposed Child Support Amount (August 27, 2014).

⁶ 15 AAC 05.030(h).

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ Civil Rule 90.3, Commentary III.E.

⁹ Attachment A.

¹⁰ Exhibit 13 at 3 (Mr. G received a deduction for child support in a prior relationship).

¹¹ Attachment B.

in the home.

Neither party filed a response to the notice which gave them until September 8, 2014 to object to the revised calculations. Thus, in the absence of any additional evidence, the revised calculations should be adopted.

IV. Conclusion

The Modified Administrative Child Support and Medical Support Order issued on April 29, 2014 is incorrect. Using a 50/50 shared custody calculation, the revised child support should be \$837 per month effective April 1, 2014 and ongoing for two children.

V. Child Support Order

- Mr. G is liable for child support for M and H in the amount of \$837 per month effective April 1, 2014, and ongoing;
- All other provisions of the Amended Administrative Child and Medical Support Order dated April 29, 2014 remain in full force and effect.

DATED this 17th day of September, 2014.

Signed _____
Rebecca Pauli
Administrative Law Judge

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 6th day of October, 2014.

By: *Signed* _____
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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