

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

IN THE MATTER OF:)	
)	OAH No. 10-0006-CSS
N. D. L.)	CSSD No. 001159144
_____)	

DECISION AND ORDER

I. Introduction

The obligor, N. D. L., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on October 29, 2009. The Obligee children are A. and S., twins three years of age.

The formal hearing was held on January 25, 2010. Mr. L. appeared by telephone; the custodian, S. E. T., did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on February 1, 2010.

Based on the record and after careful consideration, Mr. L.’s child support is set at \$50 per month, effective June 1, 2008, due to his incarceration. Mr. L. should contact CSSD upon his release to request a modification.

II. Facts

A. History

Ms. T. applied for public assistance on behalf of A. and S. in June 2008.² On October 17, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. L.³ He requested an administrative review but did not provide income information.⁴ On October 29, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. L.’s ongoing child support at \$50 per month, with arrears of \$1,986 for the period from June 2008 through December 2009.⁵ Mr. L. appealed on December 30, 2009, asserting the child

¹ A call placed to Ms. T.’s telephone number of record just before the hearing went unanswered.
² Exh. 1.
³ Exh. 2.
⁴ Exh. 3.
⁵ Exh. 5.

support amount for the entire period should be set at \$50 per month because he was incarcerated.⁶

B. Material Facts

Mr. L. was arrested in April 2008 and subsequently began serving a long-term jail sentence at the Spring Creek Correctional Center in June 2008. He testified that his expected release date was January 29, 2010, and that upon his release he intended to reunite his family and live in Wasilla, although he was not certain the custodian would agree to join him there.

Prior to his incarceration, Mr. L. worked a few months as a laborer on a local sewer and water project. During the first quarter of 2008, he received \$9,667.80, his only earned income for the year.⁷ He testified he lost his job after being incarcerated.

III. Discussion

CSSD calculated Mr. L.'s 2009 and ongoing child support at \$50 per month, based on his current incarceration.⁸ Mr. L. is not challenging that figure. Rather, he has appealed the 2008 child support amount of \$198 per month, which CSSD calculated from the \$9,667.80 in income he earned during the earlier part of 2008.⁹ He argues his child support for all of the time periods involved should be \$50 per month based on his incarceration.

A parent is obligated both by statute and at common law to support his or her children.¹⁰ By regulation, CSSD collects 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(ren).¹¹ Ms. T. requested public assistance in April 2008, so that is the first month for which Mr. L. is obligated to pay support for A. and S. through CSSD.

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." According to the commentary to Civil Rule 90.3, the child support obligation is to be calculated from "the income which will be earned when the support is to be paid."¹²

⁶ Exh. 6.

⁷ Exh. 8.

⁸ Exh. 5 at pgs. 7 & 8.

⁹ Exh. 5 at pgs. 6 & 9.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ 15 AAC 125.105(a)(1)-(2).

¹² Civil Rule 90.3, Commentary III.E.

As the person who filed the appeal in this case, Mr. L. has the burden of proving by a preponderance of the evidence that the child support amount established in CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.¹³

CSSD stated at the hearing that it calculated Mr. L.'s 2008 child support amount at \$198 per month from the income he earned before he was incarcerated in April 2008. CSSD said the agency used this income amount based on the direction of Civil Rule 90.3(a), which specifies that child support should be calculated from an obligor's annual income.

CSSD is correct, of course, in that child support is to be calculated from annual income figures. However, how the child support is to be calculated is a different issue than when a specific child support amount is to be applied. It may not always be correct to apply the child support amount calculated from an obligor's annual income to all the time periods at issue in a particular case. A prime example is the situation in which an obligor is employed and earning income but then is incarcerated during the year on a long-term basis.¹⁴ Beginning with the month the obligor is incarcerated, he or she no longer has access to earned income and should have a minimum order of \$50 per month unless there are other factors to be considered.¹⁵

In this case, once Mr. L. was incarcerated, he no longer had access to the income he earned earlier in the year. In fact, his income stopped, so there was no income being earned at the time support was to be paid during the months of June 2008 through December 2008. Thus, to apply the child support amount calculated from his earlier income to those months was contrary to Civil Rule 90.3.

IV. Conclusion

Mr. L. met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Although he was employed earlier in the calendar year, Mr. L.'s long-term incarceration began in June 2008, and he had no reportable income after that. Accordingly, June 2008 is the month his minimum order of \$50 per month should commence.

¹³ 15 AAC 05.030(h).

¹⁴ Another situation in which a support amount may change during the course of a calendar year is when a military member has a change of duty station and starts earning a significantly lower (or higher) income due to changes in the non-pay benefits package. CSSD routinely performs another calculation, based on applicable annual income figures, to be applied as of the first month of the changed circumstances.

¹⁵ In a recent prisoner case, an obligor's child support was calculated from Native corporation dividends because he received them regardless of whether he was incarcerated. *See IMO R.P.*, OAH No. 09-0681 at 3 (2010).

V. Child Support Order

- Mr. L. is liable for child support for A. and S. in the amount of \$50 per month, effective June 1, 2008 and ongoing;
- Mr. L. should contact CSSD upon his release to request a modification review;
- All other provisions of the October 29, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 22nd day of February, 2010.

By: Signed
Kay L. Howard
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 12th day of March, 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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