

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

IN THE MATTER OF)
)
 L. H.) OAH Case No. 10-0037-CSS
) CSSD Case No. 001157311
_____)

DECISION & ORDER

I. Introduction

The obligor, L. H., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 18, 2009. A hearing was held on March 4, 2010. Erinn Brian represented CSSD by telephone. Mr. H. appeared by telephone, as did the custodian of record, A.K. (formerly A. H.). The child is C. H.

Arrears are set at \$228 per month for one child for the period from February 1, 2009, through December 31, 2009, and at \$50 per month for one child from January 1, 2010 through April 30, 2010. Ongoing support is set at \$50 per month, effective May 1, 2010.

II. Facts

Mr. H. is a carpenter by trade. Although Mr. H. has been actively involved in C.'s life, the Superior Court established primary custody with Ms. K. In 2006 and 2007 Mr. H. had been earning \$15.00 per hour. In 2009 Mr. H. worked for several months, but he had trouble finding work for a large part of the year. During this time Mr. H. lived with his mother, doing some remodeling work, yard work and house work in exchange for room and board. CSSD estimates that Mr. H.'s compensation for work done for his mother is the equivalent of earning \$15.00 per hour half-time. Based on this estimate, CSSD calculates that Mr. H. earned the equivalent of \$15,600 in gross income in 2009.

On February 22, 2010, Mr. H. fell out of a third-floor window and was seriously injured. Mr. H. provided CSSD with a physician's letter stating that Mr. H. would be unable to work at all for a period of at least six months. Mr. H. has applied for Social Security Disability benefits. At the time of the hearing, Mr. H. was still in the hospital. CSSD reported on April 15, 2010, that Mr. H. is now living in an assisted living facility.

Ms. K. testified at the hearing and confirmed that Mr. H. had been having legitimate difficulty finding work in 2009, and that his recent accident was very serious. Ms. K. stated that at this point she is not suffering financially, and she is not as concerned about receiving support as she is ensuring that Mr. H. recovers and is able to continue being an involved father for C.

III. Discussion

In a primary custody situation, child support is calculated by applying the Civil Rule 90.3(a) formula to the obligor's adjusted annual income. In calculating the obligor's income, CSSD is required to use the best available evidence of what the obligor actually earned from all sources.¹

Calculating an estimate of Mr. H.'s earnings or earning equivalent in 2009 is difficult, given the informality of the arrangement with his mother. CSSD's estimate that Mr. H. earned the equivalent of \$15,600 in 2009, based on half-time work at \$15.00 per hour, is reasonable under the circumstances. This estimate results in adjusted annual income of \$13,703.64, and a monthly child support obligation of \$228 for one child.² There is no dispute that Mr. H. is not capable of working at this point and is unlikely to have any significant income in the immediate future. CSSD is correct that Mr. H.'s ongoing support amount should be set at the minimum level of \$50 per month.

IV. Conclusion

Arrears should be set at \$228 per month for covered periods in 2009 and at \$50 per month for 2010 and ongoing.

V. Order

IT IS HEREBY ORDERED that Mr. H.'s support obligation be set at \$50 per month for one child, effective May 1, 2010. Arrears are set at \$228 per month for the period from February 1, 2009, through December 31, 2009, and at \$50 per month for the period from January 1, 2010, through April 30, 2010. All other elements of the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on November 18, 2009, shall remain in effect.

DATED this 3rd day of May, 2010.

By: *Signed* _____
DALE WHITNEY
Administrative Law Judge

¹ 15 AAC 125.050.

² Exhibit 15, page 1.

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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 26th day of May, 2010.

By: Signed
Signature
Terry L. Thurbon
Name
Chief Administrative Law Judge
Title

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