

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

IN THE MATTER OF)
)
 F. S.)
_____)

OAH Case No. 010-0047-CSS
CSSD Case No. 001160160

DECISION & ORDER

I. Introduction

The obligor, F. S., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on January 13, 2010. At Mr. S.'s request, a hearing was held on March 9, 2010. Mr. S. appeared by telephone. The custodian, T. R., also appeared by telephone.¹ Erinn Brian represented CSSD. The child is D. S.

Mr. S.'s child support obligation is set at \$506 per month for one child, effective April 1, 2010. Arrears are set at \$506 per month for the months of November, 2009, through March, 2010.

II. Facts

This case arises from an application for public assistance by Ms. R. on behalf of D. Although it appears that Ms. R. began receiving benefits in May of 2009, both parties testified that they had lived together as an intact family in same household until near the end of October, 2009. At that point Ms. R. moved out. The parties agree that from that time on they have shared physical custody on an equal basis on a two weeks on/two weeks off basis to coincide with Mr. S.'s employment on the North Slope. The parties testified that they intend to continue this 50/50 arrangement for the foreseeable future, unless the Superior Court orders otherwise in a pending custody case.

CSSD has calculated Mr. S.'s adjusted annual income to be \$55,072.84 based on Department of Labor data. Mr. S. has not disputed this amount, which would result in a monthly support obligation of \$918 per month if Mr. S. were the obligor in a primary custody situation. Ms. R.'s income is more difficult to calculate. Although she attended the hearing by telephone, Ms. R.'s connection was lost and it was not possible to question her regarding her income. Mr. S. testified that Ms. R. has no specialized training or qualifications, but neither does she have any impediment to her ability to work full-time. Mr. S. testified that this is true for him as well, and

¹ Ms. R.'s call in to the hearing was disconnected during the hearing. The ALJ attempted to call Ms. R. back, but was unable to reestablish the connection. Ms. R. therefore missed the last seven minutes of the hearing.

in his opinion Ms. R. could be doing the exact same job he is doing on the Slope and earning the same level of income.

After the hearing, CSSD submitted income information for Ms. R. obtained from the Department of Labor. In 2008 and the first four months of 2009, Ms. R. was earning \$12.75 per hour, although it does not appear that she was working full time.² Ms. R. quit this job on May 1, 2009, and began collecting unemployment benefits. It is unknown why Ms. R. quit and whether she has been working anywhere else or receiving any other income after May of 2009. Ms. R.'s actual gross income for 2009, including wages, unemployment insurance benefits, and a PFD was \$16,144.81. Her adjusted annual income was \$14,663.17. This amount would result in a support obligation of \$244 for one child if Ms. R. were the obligor in a primary custody situation.³

III. Discussion

There is no dispute that Mr. S. should not be obligated to pay support for the period when the entire family was living together. The parties and CSSD agree that no support obligation accrued until November of 2009.

In a shared custody situation, child support is calculated under a formula contained in Civil Rule 90.3(b). This formula requires calculating how much each parent would owe the other if the other had primary custody. This amount is then divided by the amount of time each parent has the child, one half for both parents in this case. The lower of these two amounts is subtracted from the higher, and that amount multiplied by 1.5 is the amount of support.

Before performing the above calculation, it is necessary to determine the correct amount of income to attribute to Ms. R. When calculating arrears, the correct amount of income is the amount the parent actually earned during the year in question.⁴ There is no dispute about Ms. R.'s actual earnings in 2009, and CSSD has correctly calculated that applying the shared custody formula to the actual earnings of the parties results in an obligation on Mr. S.'s part to Ms. R. in the amount of \$506 per month for one child.⁵ This is the correct amount for periods of arrears.

For ongoing support, the calculation should be based on the obligor's likely earnings. If a person is involuntarily and unreasonably underemployed, income may be imputed according to

² Exhibit 8.

³ Exhibit 9, page 1.

⁴ 15 AAC 125.110(e).

⁵ See Exhibit 9, page 3.

the person's earning potential.⁶ Although income may not be imputed to a parent caring for a child under the age of two, the parents in this case share equally in the care of the child.

Ms. R. has a demonstrated ability to earn \$12.75 per hour. While she does have the problem of child care for the two weeks she has custody, this is not a concern for the alternating two-week periods when she does not have custody. Under the circumstances, there does not appear to be a reasonable impediment to Ms. R. working the equivalent of a full-time job.

Full-time employment at \$12.75 per hour would result in gross annual wages of \$26,000.⁷ Applying standard deductions results in an adjusted annual income of \$22,910.24, and a monthly support obligation of \$382 for one child in a primary custody situation.⁸ Calculating support for equally shared custody using this figure and Mr. S.'s income results in a support obligation on Mr. S.'s part of \$402 per month for one child.⁹ This is the correct amount for ongoing support.

Mr. S. questions whether he should be obligated to Ms. R. at all when they have, in his view, equal earning ability, and he is choosing to work long hours on the North Slope to earn more income while Ms. R. is working less than full-time. Mr. S. essentially argues that with equal custody and equal earning ability, neither party should owe support to the other.

Mr. S.'s argument is based on the assumptions that Ms. R. is unreasonably and voluntarily underemployed, and that her earning capacity is the same as his. There is no evidence in the record suggesting that Ms. R. is unable to work full-time. To the extent she does work less than full-time, the conclusion that Ms. R. is unreasonably and voluntarily underemployed is reasonable. However, the assertion that Ms. R. could be earning the same comparatively high income that Mr. S. enjoys is supported only by Mr. S.'s statement to that effect. Based on this record, there is not sufficient evidence to conclude that Ms. R.'s earning capacity exceeds \$12.75 per hour by any significant degree.

IV. Conclusion

CSSD has correctly calculated arrears according to the best information available. Arrears should be calculated based on Ms. R.'s actual earnings in 2009. Ongoing support should be calculated based on an equally shared custody arrangement with and Ms. R.'s ability to work full-time at \$12.75 per hour.

⁶ Civil Rule 90.3(a)(4).

⁷ \$12.75 x 40 hours per week x 52 weeks.

⁸ This calculation is derived from CSSD's online support calculator available at <https://webapp.state.ak.us/cssd/guidelinecalc.jsp>.

V. Order

IT IS HEREBY ORDERED that Mr. S.'s child support obligation be set at \$402 per month for one child, effective April 1, 2010. Arrears are set at \$506 per month for the months of November, 2009, through March, 2010. All other elements of the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on January 13, 2010 shall remain in effect.

DATED this 7th day of April, 2010.

By: Signed
DALE WHITNEY
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 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 5th day of May, 2010.

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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