

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

IN THE MATTER OF)	OAH No. 10-0075-CSS
J. R. W.)	CSSD No. 001155643
)	
_____)	

DECISION AND ORDER

I. Introduction

A formal hearing was held on March 10, 2010 and March 25, 2010 to consider the child support obligation of J. R. W. (Obligor) for the support of his child, I. Mr. W. appeared by telephone. The custodial parent, C. L. W., did not participate.¹ Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (CSSD). The hearing was audio-recorded.

This case is Mr. W.’ appeal of CSSD’s establishment of an administrative child support order for I. Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that it is necessary to reduce Mr. W.’ child support obligation to the minimum, \$50 per month, in order to prevent injustice.²

II. Facts

A. History

Ms. W. requested the public assistance for I. in December of 2007. Paternity is not in dispute. Mr. W. is named as the child’s father on her birth certificate.³

The Division issued an Administrative Child and Medical Support Order on March 5, 2009.⁴ Mr. W. requested an administrative review.⁵ The Division issued an Amended

¹ Ms. W. did not appear or provide a phone number as directed by the notice sent to her at her addresses of record for the hearing. The ALJ was unable to contact her at her phone number of record for hearings. A message was left for her at her phone number of record on both hearing dates but she did not respond.

² The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.

³ Ex. 1, 2 & 8.

⁴ Ex. 3.

⁵ Ex. 4.

Administrative Child and Medical Support Order on January 26, 2010.⁶ This order set the Mr. W.' ongoing child support obligation at \$255 per month based on imputed full-time year-round minimum wage earnings, plus a PFD.⁷ The order also established arrears based on reported income going back to December 1, 2007.⁸ Mr. W. requested a formal hearing. Mr. W. complained that the Division's records indicated that he had earned wages from two companies that he had never worked for. The Division later confirmed Mr. W. had not worked for these companies.⁹

Prior to the hearing, Mr. W. provided documentation of his medical problems, his disability, and his current income. The Division provided new calculations based on updated income information. At the end of the hearing, Division argued that Mr. W.' child support arrears and his ongoing child support should be set at \$103 per month based on his actual income, including the value of his employer provided cabin and electricity.¹⁰

Mr. W.' ability to work is impaired as the result of mental and physical medical conditions. Mr. W. receives treatment at the Tok Area Counseling Center from psychiatrist, Dr. Ronald Pollock. In a letter from the Tok Area Counseling Center, Mr. W. is characterized as one of the center's "Seriously Mentally Ill adults." The letter explains that Mr. W. "level on the Global Assessment of Functioning, GAF, is below 50," that he has symptoms of serious impairment of occupational and social functioning, and he would not be a good candidate for employment.¹¹

Mr. W. also suffers from hypertension and emphysema, which leave him short of breath when he exerts himself. His physician prescribed two blood pressure medications and concluded that Mr. W. may already have suffered a small stroke, which resulted in numbness in his left hand and leg.¹²

Mr. W. explained that he lives about two miles outside of Tok, Alaska in a cabin without running water. Mr. W. lives in this cabin rent free and his electricity is paid for in exchange for

⁶ Ex. 6.

⁷ Ex. 6.

⁸ Ex. 6.

⁹ Ex. 7.

¹⁰ Ex. 4 & Recording of Hearing.

¹¹ Recording of Hearing & Ex. C & Ex. 4, pages 13-18.

¹² Recording of Hearing.

doing maintenance on the property which includes three other rental cabins.¹³ Prior to the hearing, Mr. W. provided income information on what he earns besides rent for other work he does, and the value of the housing that he receives.¹⁴

The Division estimated that Mr. W.' actual income, including the value of his employer provided cabin and electricity, plus a PFD is \$6,154 per year. This results in a child support obligation of \$103 per month.¹⁵

For the foreseeable future, Mr. W.' financial circumstances will be fairly desperate. At the time the hearing, he was receiving public assistance in the form of food stamps and heating assistance. Mr. W. had stopped taking medication for his bipolar and hypertension for the past several months because he could not afford them and he lost public assistance health coverage.¹⁶

B. Findings

1. Based on the evidence in the record I find that it is more likely than not that Mr. W.' child support based on his actual income would result in a monthly child support amount calculated under the formula in Alaska Civil Rule 90.3(a) of \$103 per month.¹⁷
2. Mr. W. has shown by clear and convincing evidence that manifest injustice will result if his monthly arrears and ongoing child support are not reduced to \$50 per month.¹⁸

III. Discussion

Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."¹⁹ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if

¹³ Recording of Hearing. The record indicates that this property may belong to Mr. W.' relative. *See* exhibit 4, page 12.

¹⁴ Ex. A & B.

¹⁵ Recording of Hearing & Exhibit 8, page 4.

¹⁶ Recording of Hearing.

¹⁷ Ex. 8 & Recording of Hearing.

¹⁸ Recording of Hearing.

¹⁹ Alaska Civil Rule 90.3(a)(1).

the support award were not varied." ²⁰ Good cause includes a finding of unusual circumstances.²¹

The circumstances of this case are unusual. Below poverty level income is no longer in itself an unusual circumstance that would indicate that child support should be reduced. In this case, however, Mr. W.' poverty is a threat to his health and further limits his ability to function because it limits his ability to pay for the medications that he needs.

Manifest injustice would result if the support award is not reduced to the minimum in this case. The burden of paying more child support will make it more difficult for Mr. W. obtain the prescription drugs he needs to maintain his ability to function and prevent the life threatening conditions that could result from his failure to follow the treatments prescribed by his doctors.

IV. Conclusion

Mr. W.' arrears and his ongoing child support should be set at the \$50 minimum monthly amount permitted under Civil Rule 90.3(c)(1)(B).

V. Child Support Order

1. Mr. W. owes ongoing child support for I. in the monthly amount of \$50, effective May 1, 2010.
2. Mr. W. is liable for child support arrears for I. in the monthly amount of \$50 for the months of December 2007 through April 2010.
3. All other provisions of the Division's Modified Administrative Child Support and Medical Support Order issued on January 26, 2010 remain in effect.

DATED this 31st day of March, 2010.

By: Signed
Mark T. Handley
Administrative Law Judge

²⁰ Alaska Civil Rule 90.3(c).

²¹ Civil Rule 90.3(c)(1)(A).

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 21st day of April, 2010

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

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