

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

IN THE MATTER OF)
)
 J. H.) OAH Case No. 10-0150-CSS
) CSSD Case No. 001129985
_____)

DECISION & ORDER

I. Introduction

The obligor, J. H.s, appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on March 10, 2010. Mr. H. appeared by telephone at a hearing held on April 22, 2010. The custodian, K. F., did not appear.¹ Erinn Brian represented CSSD. The child is S. F.

Mr. H.'s child support obligation is set at \$656 per month for one child, effective October 1, 2009.

II. Facts

Mr. H.'s previous support amount had been set at \$450 per month for one child in 2005. Mr. H. was unemployed for a period in 2009, and he requested a modification in hopes of obtaining some relief from his support amount. Upon reviewing Mr. H.'s actual earnings for 2009, CSSD modified Mr. H.'s support obligation and raised it to \$663 per month for one child.

Mr. H. does not dispute CSSD's calculation of his income. In 2008 Mr. H. worked for the State of Alaska and earned \$52,355.48. In 2009 he worked for several different employers and a total of \$49,241.09, which includes \$6,835 in unemployment insurance benefits and \$1,305 in PFD income. Although he was unemployed for a number of months in 2009, Mr. H. found steady employment in Fairbanks in November of 2009. Mr. H.'s pay varies by the hours he works, but as of April 27, 2010, Mr. H. had earned \$22,646.49 for the year to date.²

Mr. H. testified about his current household and financial situation. Mr. H. is married and has two biological children living in his home, ages 2 and 4. Mr. H.'s wife has been unemployed, but she has recently found work and is earning \$14.00 per hour for 25 hours per week. Their mortgage payment is currently \$553 per month, but the house they own is under contract because they are moving from No Name City to Fairbanks where Mr. H.'s new job is

¹ Ms. F. did not provide a contact number for the hearing. The administrative law judge attempted to contact Ms. F. at two numbers on file for her, but was not successful.

located. Mr. H. expects his rent or mortgage in Fairbanks to be substantially higher. The family's monthly household expenses are roughly \$650 for food and \$700 for all their utilities. Mr. H. has a 2004 GMC pickup that he owes \$11,000 on, with monthly payments at \$380 per month. He and his wife also own a 2005 Ford Expedition and a 2002 Chevrolet Cavalier, both of which are paid for. The family has two ATVs, one of which is paid for and one that has a balance owed of about \$7,000, with payments of \$209 per month. Their car insurance is about \$140 per month, and they spend about \$500 for gasoline. Other expenses include \$120 for medications, \$170 for personal care items, about \$100 for tobacco. Finally, the family has incurred debt of \$25,000 on two credit cards, with total payments of \$430 per month.

III. Discussion

Child support for one child in a primary custody situation is generally calculated at twenty percent of the obligor's adjusted gross income.³ Support may be varied from this basic formula upon a showing by clear and convincing evidence that manifest injustice will result if the support amount is not varied.⁴ Varying support from the standard formula requires a written explanation of the reason and consideration of the custodian's financial situation as well.

Mr. H.'s household has monthly expenditures of almost \$4000 per month, compared to average adjusted income in 2009 of \$3,280 per month.⁵ All of these expenditures are likely to change within a month when the family moves from No Name City to Fairbanks. The mortgage payment will probably be higher, but the expenditures on gasoline and vehicle-related costs should go down. On the other hand, Mr. H.'s new job, according to CSSD, will pay better than his previous one. At this point it is difficult to predict how the monthly expenses will come out, but there is no doubt that Mr. H.'s household is under financial strain.

The difficult part of Mr. H.'s request to lower his obligation is that supporting one's child is among the highest priority of expenses. It is so important that it is a legal obligation, and child support should be the very last expense to cut when budgets are tight. Mr. A.'s household owns three vehicles and two four-wheelers. The combined debt on the truck and one of the four-wheelers is \$18,000, or \$589 per month. These two vehicles do not appear to be necessary for transportation, but are more in the nature of luxury goods. Along with the costs of gas and related expenses, these expenses alone would be enough to pay the child support. Trucks and

² Exhibit 12.

³ Civil Rule 90.3(a).

⁴ Civil Rule 90.3(c)(1).

⁵ Exhibit 13 (adjusted annual income of \$39,364 ÷ 12).

ATVs are often part of the rural Alaskan lifestyle, but they are generally not a necessity and not more important than supporting one's child.

Despite the strain on his household budget, Mr. H. has not met the high standard of showing by clear and convincing evidence that reduction below the standard amount of child support is necessary in his case to avoid manifest injustice. Child support should be set according to the standard formula.

After carefully reviewing Mr. H.'s financial information for 2009 and applying all applicable deductions, CSSD has recalculated Mr. H.'s support obligation to be \$656 per month for one child, based on total gross income of \$49,712.59 and adjusted income of \$39,364.27 for 2009.⁶ This calculation appears to be correct and should be the amount of support.

CSSD has projected Mr. H.'s income for 2010 to be substantially higher, and it has recommended that ongoing support be set at \$863 per month for one child effective January 1, 2010. There is merit to this suggestion, as the change in Mr. H.'s employment situation has made 2009 a less reliable predictor of his income for 2010. However, Mr. H. is still fairly new at his job, and not all of his income is guaranteed. Mr. H. works in a gold mine, and his pay will vary with production, which may be affected by circumstances beyond Mr. H.'s control. If it is apparent after the end of 2010 that Mr. H. is doing as well as CSSD anticipates, either Mr. H. or Ms. F. may request further modification at that time. At this point support should be based on Mr. H.'s earnings for 2009.

IV. Conclusion

Mr. H.'s support should be based on his actual income for 2009. CSSD has correctly calculated Mr. H.'s support obligation to be \$656 per month for one child, effective October 1, 2009. Mr. H. has not provided clear and convincing evidence that the support amount must be varied from the standard calculation to avoid manifest injustice.

⁶ Exhibit 13.
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V. Order

IT IS HEREBY ORDERED that Mr. H.'s support obligation be set at \$656 per month for one child, effective October 1, 2009. All other elements of the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on March 10, 2010 shall remain in effect.

DATED this 7th day of May, 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 4th day of June 2010.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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