

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

IN THE MATTER OF:)	
)	
J. S. C., JR.)	
)	
_____)	OAH No. 10-0208-CSS CSSD Case No. 001159493

DECISION AND ORDER

I. Introduction

This case concerns the obligation of J. S. C., Jr. for the support of J. R. The custodian of record is Jennifer R.

The Child Support Services Division established Mr. C.'s support obligation and issued an amended administrative child support order in the amount of \$255 per month, effective April 1, 2010, with arrears in the amount of \$2,863 from June 1, 2008, through March 31, 2010. Mr. C. filed an appeal and the case was referred to the Office of Administrative Hearings.

The assigned administrative law judge conducted a telephonic hearing on May 10, 2010. Mr. C. participated and provided testimony. Ms. R. was not available at her telephone number of record and did not participate. Erinn Brian represented the division.

The division's amended order was based on actual income for arrears and on expected future income for ongoing support. The division estimated Mr. C.'s expected future income based on full-time work at the minimum wage. On appeal, Mr. C. asserted that he was unable to earn income at that level. Based on the testimony at the hearing and the evidence in the record, Mr. C.'s ongoing child support obligation is set at \$145 per month.

II. Facts

J. C., Jr. lives with his mother, who is disabled, in a cabin off the No Name Highway at milepost 00.7, a couple of miles past Wasilla. He has an eighth grade education. He is a registered sex offender resulting from a 2005 felony conviction. Mr. C. has a driver's license. He has no vehicle of his own but has access to his mother's vehicle. There is no public transportation to his current residence. Mr. C. is unemployed

and subsists on food stamps. Mr. C. has looked for work but has been unable to find employment since his last job ended in 2008.

Mr. C.'s last job was at an auto junkyard. In 2007 he earned wages of \$11,472.63.¹ Mr. C. lost his job during the second quarter of 2008 and lived on unemployment compensation for the rest of the year. In 2008, Mr. C. had a total income of \$13,850.08, including wages (\$6,171.08), his Alaska Permanent Fund dividend and energy payment (\$3,269), and unemployment benefits (\$4,410).² Mr. C. stopped receiving unemployment in early 2009 and he has had no income (other than his Alaska Permanent Fund dividend) since that time. In 2009, his total income was \$1,683, including his Alaska Permanent Fund dividend (\$1,305) and unemployment compensation (\$378).³

III. Discussion

A. Applicable Legal Principles

When a child support order is established, the division first determines the amount of pre-order arrears, that is, the amount owed from the date the proceeding was initiated until a final administrative order is issued. When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.⁴

Next, the division determines the amount of ongoing support, that is, the amount owed each month after a final administrative order is issued. Generally, the ongoing support obligation is based on “the expected annual income that the parent will earn or receive when the child support award is to be paid.”⁵ However, if the individual is voluntarily and unreasonably unemployed or underemployed, the ongoing support obligation is based upon potential income.⁶

¹ Ex. 13, p. 1.

² Ex. 11, p. 10.

³ Ex. 11, p. 7.

⁴ Duffus v. Duffus, 72 P.3rd 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3rd 52, 56 (Alaska 2001).

⁵ 15 AAC 125.030(a).

⁶ 15 AAC 125.020(b). *See* Civil Rule 90.3(a)(4) (“voluntarily and unreasonably...unemployed or underemployed”) [emphasis added].

B. Arrears

Mr. C.'s actual income in 2008-2010 is undisputed in the record. Based on his actual income, arrears are due at the rate of \$214 per month in 2008, and \$50 per month in 2009 and 2010 through the date this order is final.⁷

C. Ongoing Support

1. *Relevant Information*

15 AAC 125.050(c)(1)-(9) provide that to determine expected annual income, the Division looks "the best available information" including the parent's (1) current income, (2) actual income in the immediately preceding calendar year, (3) partial year income, (4) wage rates in previous jobs, (5) job skills, training, work history and education; (6) average salaries in the parent's field, (7) available employment in the area; (8) applicable minimum wage, and (9) restrictions on ability to work.⁸

(1) Current Income

Mr. C. is currently unemployed and not receiving any unemployment benefits. He benefits from free housing in his mother's cabin and he receives food stamp.

(2) Actual Income In Preceding Calendar Year

Mr. C.'s actual total income in 2009 was \$1,683.

(3) Partial Income (Current Year)

Mr. C.'s income for 2010 to date is zero.

(4) Prior Wage Rates

Mr. C. appears to have earned the minimum wage in his prior employment.

(5) Job Skills, Training, Work History and Education

Mr. C. has no particular job skills or training. His work history is spotty. He dropped out of school in his first year of high school.

⁷ See *Ex. 11*, p. 8.

⁸ Potential earnings are determined "based on available information, the parent's past income, skills, work history, and education, and the job opportunities in the area where the parent physically resides." 15 AAC 125.020(b). These are substantially the same indicia used to determine expected annual income. Potential income, in effect, is the amount that an individual would earn if engaged in a reasonable job search. Thus, for a person who is not unreasonably unemployed, potential income may be effectively the same as expected income.

(6) Average Wage

Average wages for a person of Mr. C.'s skills and experience would be the minimum wage.

(7) Availability of Employment

Mr. C. lives in a cabin at milepost 48.7 of the Parks Highway. He is within a couple of miles of Wasilla, which is a commercial center with ample job availability.

(8) Minimum Wage

The minimum wage in Alaska is \$7.75 per hour, equivalent to a monthly wage of about \$1,343.33.

(9) Restrictions

Mr. C. is a convicted felon and a registered sex offender. This status can reasonably be expected to substantially restrict his employment opportunities.

2. *Expected Income*

Mr. C.'s total wages from the second quarter of 2007 through the second quarter of 2008 were \$17,643.71, which is equivalent to annual wages of \$14,114.97. However, since he lost his job at a nearby auto yard, Mr. C. has been unable to find employment. Since for a lengthy period of time he received unemployment compensation, it may reasonably be assumed that he did make at least some effort to obtain employment during that time. Given his minimal education, criminal history, and lack of work history or job skills, it is reasonable to anticipate that he will find it difficult to obtain and maintain employment even in an area such as Wasilla. Accordingly, his expected income is based on the equivalent of half-time work at the minimum wage ($\$7.75 \times 1,040 = \$8,060$). At that rate, Mr. C.'s support obligation is \$145 per month, as shown on Appendix A.

IV. Conclusion

Mr. C.'s arrears are based on his actual income during the period of arrears. His ongoing support obligation should be based on his expected annual income during the period the order will be in effect.

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated November 19, 2009, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated November 19, 2009, is **AFFIRMED**:

- 1. Mr. C.’s arrears are set at \$214 per month in 2007, and \$50 per month in 2009 and from January through June, 2010.
- 2. Amended ongoing child support is set at \$145 per month, effective July 1, 2010.

DATED: June 14, 2010.

Signed _____
 Andrew M. Hemenway
 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 7th day of July, 2010.

By: *Signed* _____
 Signature
 Andrew M. Hemenway _____
 Name
 Administrative Law Judge _____
 Title

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