

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

IN THE MATTER OF:)
)
A. C. W.) OAH No. 10-0280-CSS
) CSSD No. 001137154
_____)

DECISION AND ORDER

I. Introduction

This is an action to add a child to an existing child support order. The obligor parent is A. C. W. The custodian of record is D. J. T. The additional child is E. L. W. who is two years old.

A hearing was held on June 29, 2010. Both parents participated by phone. Child Support Specialist Erinn Brian was present in person and represented the Child Support Services Division (CSSD). The record was kept open for an additional week to allow CSSD to submit updated calculations.

II. Facts

A. Background

A Modified Administrative Child Support and Medical Support Order was issued on May 11, 2009, setting Mr. W.' support obligation at \$409 per month for four children.¹ An Order Establishing Paternity was issued on September 21, 2009. This order establishes that Mr. W. is the father of E.² A Notice of Petition for Modification of Administrative Support Order was mailed on January 19, 2010.³ A Modified Administrative Child Support Order was issued on May 13, 2010, adding E. to the support order, setting Mr. W.' child support obligation at \$643 per month for four children,⁴ and setting a past due amount for E. of \$424.⁵ Mr. W. appealed the modified order.⁶

¹ Exhibit 1.

² Exhibit 3.

³ Exhibit 4.

⁴ One of the prior children had been adopted, so although E. was added to this order, the total number of children covered by the support order remained at four.

⁵ Exhibit 5.

⁶ Exhibit 6.

B. Material Facts

Mr. W. and Ms. T. provided testimony as to the dates they were living in the same household. While there were some discrepancies as to the exact dates, it is more likely than not that they were living together prior to June of 2009. In June, July, and August of 2009, they were not living in the same household. They got back together in September, and remained together until January 1, 2010.

Mr. W. testified that he was incarcerated in April of 2010, and will remain incarcerated until February 10, 2011. The parties' children had been living with Ms. T., but were taken from the home by the Office of Administrative Hearings Children's Services and placed in the custody of Mr. W.' parents in May of 2010. CSSD mailed an application for services to his parents in May, but no request for services had been made as of the date of the hearing.⁷

In 2009, Mr. W. earned \$23,446.51 in wages and \$657 in unemployment benefits.⁸

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." The person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁰

Based on the evidence presented at the hearing, CSSD's original modification was incorrect. Mr. W.' 2009 income and unemployment benefits results in a support obligation for four children of \$612 per month.¹¹ The obligation for three children would have been \$561 per month.¹² Thus, the addition of E. to this support order resulted in an additional obligation of \$51 per month.

Mr. W. owes child support only for those months when he was not living with the custodial parent and their children. Those months were June, July, and August of 2009, and January of 2010. He owes arrears of \$51 per month for those four months, for a total of \$204.

⁷ CSSD's Post-Hearing Brief.

⁸ Exhibit 7.

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ 15 AAC 05.030(h).

¹¹ Exhibit 9, page 1.

¹² Exhibit 9, page 1.

Mr. W.' child support obligation based on his 2009 income continued at \$612 per month for four children continued in February and March of 2010. In April of 2010 he was incarcerated and is no longer able to earn income. His support obligation during his incarceration is based on the minimum \$50 per month allowed by Civil Rule 90.3(c)(3).¹³

IV. Conclusion

E. should be added to the current child support order, but the total number of children covered by this order remains at four because one of the previously included children has been adopted. Mr. W. owes child support arrears for E. for four months at \$51 per month, based on his 2009 income. His support obligation for all four children should also be based on his 2009 income until his incarceration. During his incarceration, his support obligation is set at \$50 per month for four children.

V. Child Support Order

- Mr. W. is liable for arrears for E. in the amount of \$204.
- Mr. W.' child support obligation is \$612 per month for four children effective February 1, 2010 through March of 2010.
- Effective April 1, 2010, Mr. W.' child support obligation is \$50 per month for four children.
- All other provisions of the May 13, 2010 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 14th day of July, 2010.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

¹³ See, *In The Matter Of N.D.L.*, OAH No. 10-0006-CSS

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 2nd day of August, 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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