

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

In the Matter of:)

D. D., JR.)

OAH No. 10-0316-CSS

CSSD No. 001104403

DECISION AND ORDER

I. Introduction

This matter involves an appeal by the custodian, S. M. D., of an Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. D.'s case on May 11, 2010. The obligee children are S., 10, and D., 7.

The formal hearing was held on July 22, 2010. Both parties appeared by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on July 22, 2010.

Based on the record as a whole and after careful consideration, CSSD's Administrative Child Support and Medical Support Order dated May 11, 2010, is affirmed.

II. Facts

A. Procedural History

On June 29, 2005, CSSD served Mr. D. with an Administrative Child Support and Medical Support Order that set his ongoing child support at \$292 per month for two children, effective March 1, 2005.¹ Apparently the order was not appealed, nor was it ever modified. On February 8, 2010, Mr. D. filed a Motion to Vacate Default Order.² CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order dated May 11, 2010.³ The revised order set Mr. D.'s ongoing child support at \$50 per month, with arrears of \$297.59 for the period from March 2005 through May 2010.⁴ On May 21, 2010, Ms. D. filed an appeal and requested a formal hearing.⁵

¹ Exh. 1.

² Exh. 3.

³ Exh. 6.

⁴ Exh. 6 at pgs. 1-2.

⁵ Exh. 7.

B. Material Facts

Mr. D. and Ms. D. are the parents of S., 10, and D., 7. Ms. D. has custody of the children and is in the military.

Mr. D. has been incarcerated for most of the time since September 2005. He has been out of jail only twice since then, for five months each time.⁶ His only employment since 2005 was during the 3rd and 4th quarters of 2007, when he earned \$1,664.21.⁷

Mr. D.'s most recent incarceration began on October 23, 2009, and although he has not been sentenced yet, the obligor testified that he has entered into a plea agreement for a 10-year sentence and assuming good time is subtracted, he expects to be released in 7-8 years.

III. Discussion

The person who filed the appeal, in this case, Ms. D., has the burden of proving by a preponderance of the evidence that the agency's new Administrative Child Support and Medical Support Order is incorrect.⁸ The custodian's chief argument is that Mr. D. refuses to step up to the plate and support S. and D. She asserted that he keeps getting himself put in jail so that he won't have to contribute to their support and she has to take care of them on her own.

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." Under Alaska law, an obligor parent may request that CSSD vacate and reissue a child support order previously calculated from a default income amount, not the person's actual income and ability to pay.⁹ In this case, after Mr. D. completed the process and provided income information, CSSD recalculated his child support obligation and issued a new administrative order to replace the child support order issued in 2005.¹⁰

CSSD's new Administrative Child Support and Medical Support Order is correct. It is calculated from Mr. D.'s actual income, which, because he has been incarcerated and is not in the work force, results in a minimum order of \$50 per month for each year since 2005. Ms. D.'s frustration is understandable, but there is insufficient evidence in the record to find that Mr. D. is

⁶ Exh. 4 at pgs. 8, 14 & 18.

⁷ Exh. 6 at pg. 11.

⁸ 15 AAC 05.030(h).

⁹ AS 25.27.195(b).

¹⁰ Exh. 6.

voluntarily and unreasonably unemployed such that income may be imputed to him for a child support calculation.

IV. Conclusion

Ms. D. did not meet her burden of proving CSSD's May 11, 2010, Administrative Child Support and Medical Support Order is incorrect. Because Mr. D. is incarcerated, the order must be based on his actual income, which results in a child support amount of \$50 per month for each year at issue. The new administrative order should be affirmed.

V. Child Support Order

- CSSD's Administrative Child Support and Medical Support Order dated May 11, 2010, is affirmed.

DATED this 22nd day of July, 2010.

By: Signed
Kay L. Howard
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 9th day of August, 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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