

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

In the matter of:)	
)	OAH No. 10-0389-CSS
E. V. P.)	CSSD No. 001157131
_____)	

DECISION AND ORDER

I. Introduction

E. V. P. appealed an Amended Administrative Child and Medical Support Order and accompanying Administrative Review Decision that the Child Support Services Division (CSSD) issued on June 2, 2010, setting a child support obligation of \$602 per month for 2007 (one month only), \$452 per month for 2008, \$247 per month for 2009 and the first half of 2010, and \$468 per month from July 2010 forward. The obligee child is S. C. P., who was born in December of 2007.

CSSD presently seeks only to collect support arrears from the last month of 2007 and the first six months of 2008, when S. was in the custody of B. S., who was receiving Native Temporary Assistance Program benefits. After that period, S. has been in the custody of a third-party custodian who has not applied for services; the child support levels set for later periods will be used only if there is an application for services from that custodian or if the child returns to Ms. S.

The formal hearing was convened on August 26, 2010, with a supplemental session on September 9, 2010. Mr. P. participated in the first session but elected not to participate in the second session. Ms. S. participated in the second session but not the first. Both parents testified. Erinn Brian, Child Support Specialist, represented CSSD at both sessions. The hearing was recorded.

Mr. P. demonstrated that the support amount calculated for July 2010 and subsequent months was too high by about \$125 per month. He did not carry his burden on any other issue, and the Amended Administrative Child and Medical Support Order will be affirmed in all other respects.

II. Facts

A. Custody

Mr. P. suggested in his appeal document that his family was intact from the time of S.'s birth until she went into the custody of the third party. Contradicting this claim, Ms. S. testified that S. lived with her at a shelter from birth until April of 2008. She testified that she then got an apartment for approximately a month. This was the only time when Mr. P. was present with S., and his presence was brief since he was working on the North Slope. He did not contribute to rent. Ms. S. testified that she was evicted from the apartment and went with S. to live with a relative, without Mr. P., for a week or two in May, then returned to the shelter for four days, and then was incarcerated beginning May 27, 2008 (with third-party custody beginning on that date).

Ms. S. appeared to be very careful about giving an accurate account. Her testimony was precise and credible. Mr. P., in contrast, made only vague assertions about living in the same household with S. I find that Mr. P. has not established that he ever had sole or joint physical custody of S.

B. Income

Mr. P. did not dispute the income CSSD had computed for him in 2007, 2008, and 2009, and the first half of 2010. The only issue in dispute is whether the income CSSD projected for him from July 2010 forward is a reasonable projection.

CSSD projected Mr. P.'s future income by computing an average of his actual 2007 earnings, his actual 2008 earnings, and his actual 2009 earnings.¹ These figures were as follows:²

	Wages	Unemployment	Total
2007	44,376.06	3,366.24	47,742.30
2008	29,766.17	3,720.00	33,486.17
2009	6,088.78	10,639.02	16,727.80
Average	26,743.67	5,908.42	32,652.09

¹ Ex. 5 at 13.

² Ex. 5 at 7-10.

To the figure at bottom right in the table, CSSD then added the projected Doyon dividend of \$368 and projected permanent fund dividend of \$1,305, resulting in a projected total gross annual income of \$34,325.09 from July 2010 forward. CSSD acknowledged that Mr. P. has been unemployed, but reasoned that “unemployment is a temporary situation” and therefore deemed it appropriate to include in the average years in which Mr. P. was employed most of the time.³

The evidence received at the hearing did not fully support this approach. Mr. P. has not been steadily employed since June of 2008. At that time, there were large layoffs of electricians in his industry, and as a fourth-year electrician apprentice still 800 hours short of journeyman status, he was poorly protected against this downturn in work. He has not worked as an electrician since. He has sought alternative employment and been able to work on some projects, but the nature of the construction work he does is that the jobs have lasted only a few weeks.⁴

When he does find work, Mr. P. earns money quite rapidly. In the first seven months of 2010, he worked two weeks on a seismic project for V. DGC Land, Inc. (earning \$2850),⁵ and two weeks for S.and S. (probably earning about \$3700).⁶ He is retraining as a Piledrivers & Divers apprentice, and is now in his second year of that apprenticeship.⁷ He started a job on August 13, 2010, working on the new bridge in No Name City for \$24 per hour, about 60 hours per week, which equates to \$1440 per week. The work was expected to last a few weeks.⁸ He was apparently still employed in some capacity on September 9, 2010.⁹

It appears that in the first 40 weeks of 2010 Mr. P. has probably earned about \$12,310 in wages. Extrapolated to 52 weeks, this translates to annual wages of \$16,003, or almost \$10,000 more than what he earned in 2009 but far less than he earned in 2008 and 2007.

In the first 20 weeks of 2010 Mr. P. received \$5353 in unemployment compensation. This indicates that CSSD’s projection of \$5908.42 in unemployment compensation in 2010 for the whole year is too low. Given that he has worked more in the second 20 weeks of the year, it

³ Ex. 5 at 5.

⁴ Findings to this point in the paragraph come from testimony of Mr. P. (first hearing session).

⁵ Testimony of Mr. P. (first hearing session); Ex. 7 at 1.

⁶ Testimony of Mr. P. (first hearing session) ; earnings are estimated from the amount he earned from the same period of work for the same employer in 2009, as shown in Ex. 7 at 1.

⁷ Testimony of Mr. P. (first hearing session).

⁸ *Id.*

⁹ His voice mail message, when his number was called for the second hearing session, said he was unavailable because he was working “around the clock.”

is likely that the unemployment payments will decrease from what was provided in the first 20 weeks. The best estimate of what these will be over the full course of the year is a figure about halfway between the benefits Mr. P. received in 2009, when he earned only \$6088.78 in wages (\$10,639.02), and the benefits Mr. P. received in 2008, when he earned \$29,766.17 in wages (\$3720.00). Averaging these two figures yields projected unemployment for 2010 of \$7179.51.

C. Prior Children

Mr. P. has other child support cases. It seemed possible in the first hearing session that he might be eligible for larger deductions from his income for child support for prior children. Because his situation was complex, Mr. P. and Ms. Brian agreed that Mr. P. would contact Ms. Brian as soon as possible to try to work out these possible deductions. A second hearing session was scheduled to take more evidence on this issue or, alternatively, to hear any agreement the parties had reached.

Mr. P. did not contact Ms. Brian and did not participate in the second hearing session. He did not offer any evidence from which a higher deduction could be calculated.

D. Direct Payments

Mr. P. asserted in his appeal papers that he made direct support payments for S. in 2007 and 2008, but he provided no receipts or other documentation of any such payments. Ms. S. credibly denies that Mr. P. provided any significant support.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. P., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰

Mr. P. failed to establish that he ever had custody of S. Therefore, the 2007 and 2008 child support amounts, which were based on a finding that he did not share custody in any way, do not need to be revisited. Mr. P. failed to establish any support payments for prior children beyond those credited in the order under appeal. Therefore, the order must stand in that respect. He failed to establish that he made any direct support payments for S. Therefore, there is no need to evaluate what adjustments might be appropriate if he had made such payments.

The lack of proof on these other issues leaves only the ongoing child support calculation (starting in July 2010) at issue. Mr. P. has challenged the income attributed to him in that

¹⁰ Alaska Regulation 15 AAC 05.030(h).

calculation. As explained in part II-B above, the evidence supported different income figures from those used by CSSD.

When someone else has primary custody of a child, the non-custodial parent's child support obligation ordinarily is "calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in [Civil Rule 90.3](a)(2)."¹¹ By "adjusted annual income" the rule means "the parent's total income from all sources minus mandatory deductions ..." which include the basic taxes, retirement contributions up to a maximum not at issue in this case, and work-related child care.¹² Child support for one child is calculated at 20% of the resulting figure.¹³

Attachment A to this order shows the calculation that result using the income figures arrived at in Part II-B. Mr. P.'s child support amount going forward should be \$344 per month, which is somewhat less than the \$468 per month CSSD calculated using the higher income it generated by using a three-year average. The child support order will be adjusted to use the correct amount.

It is important to note that ongoing support will be collected only if a person with custody of S. applies for services with CSSD.

IV. Conclusion

In challenging the order under appeal, Mr. P. has failed to meet his burden of proof in all respects except one: he has demonstrated that the income attributed to him from July 2010 forward was too high.

V. Child Support Order

1. All provisions of the Amended Administrative Child and Medical Support Order issued on June 2, 2010 are affirmed, with the exception that child support effective July 1, 2010 and ongoing is set as provided in item 2.

¹¹ See Alaska Civil Rule 90.3(a).

¹² Civil Rule 90.3(a)(1).

¹³ Civil Rule 90.3(a)(2)(D).

2. E. V. P. is liable for child support in the amount of \$344 per month for one child for beginning July 1, 2010 and ongoing.

DATED this 13th day of September, 2010.

By: Signed
Christopher Kennedy
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 within 30 days after the date of this decision.

DATED this 4th day of October, 2010.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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