

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

IN THE MATTER OF)	OAH No. 10-0390-CSS
J M Y)	CSSD No. 001161715
)	
_____)	

DECISION AND ORDER

I. Introduction

A formal hearing was held on September 21, 2010 to consider the child support obligation of J M Y (Obligor) for the support of her child, K and B. Ms. Y appeared by telephone. The custodial parent, Travis Simpson, did not participate.¹ Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (CSSD). The hearing was audio-recorded. The record closed at the end of the hearing.²

This case is Ms. Y's appeal of CSSD's establishment of an administrative child support order for K and B. Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that it is necessary to reduce Ms. Y's ongoing child support obligation to the minimum, \$50 per month, because the evidence does not show that she is unreasonably voluntarily unemployed.

II. Facts

A. History

Mr. Simpson requested the public assistance for K and B in January of 2009. Ms. Y is the children's mother.³

The Division issued an Administrative Child and Medical Support Order on March 22, 2010.⁴ Ms. Y requested an administrative review.⁵ The Division issued an Amended Administrative Child and Medical Support Order on June 24, 2010.⁶ This order set the Mr.

¹ Mr. S did not appear or provide a phone number as directed by the notice sent to his addresses of record for the hearing. The ALJ was unable to contact him at his phone number of record for hearing.

² The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.

³ Recording of Hearing & Exhibits 5 & 6.

⁴ Exhibit 2.

⁵ Exhibit 3.

⁶ Exhibit 5.

William's ongoing child support obligation at \$344 per month based on imputed full-time year-round minimum wage earnings, plus a PFD.⁷ The order also established minimum order, \$50 per month arrears based on reported income going back to January, 2009.⁸

Ms. Y requested a formal hearing. Ms. Y explained that she had just moved to a remote area and had been unable to find work.⁹

The hearing was rescheduled at Ms. Y's request because she was due to have a child at the time scheduled for the original hearing date. Prior to the hearing, Ms. Y provided documentation of her public assistance applications.¹⁰

At the hearing, Ms. Y explained that she and her new child and the new child's father had moved again to a more populated area and that the child's father had obtained employment just in the week before the hearing, which pays \$10 per hour. Ms. Y hoped that this work would be full-time. Ms. Y had decided not to apply for a public assistance grant this month because of this new job. Ms. Y had begun the process for applying for daycare assistance and hopes to find work herself.¹¹

At the hearing, the Division argued that Ms. Y's 2010 and ongoing child support should be set at \$344 per month based on imputed income.¹²

Ms. Y has not had full-time year-round work since 2002, when she worked as a cook. Since that time, she lived with her parents and had primary custody of K and B until the children started living with their father in what she intended to have been a temporary custody change. Ms. Yeargen explained that she is still trying to work on a different custody arrangement.

Ms. Y argued that she has not been unreasonably underemployed since January of 2010. Ms. Y was pregnant and has just delivered a child. She found temporary employment, and then moved to a remote area where the father of her child had been offered a job and where she thought she would be able to find employment. Only to find that there were no jobs available.

⁷ Exhibit 5 page 9.

⁸ Exhibit 5 pages 6-9.

⁹ Exhibit 6.

¹⁰ Exhibit 7.

¹¹ Recording of Hearing- Testimony of Ms. Y.

¹² Recording of Hearing.

Ms. Y recently moved to a more populated area in hopes of finding employment after her child was born but has not found any yet.¹³

B. Findings

1. Based on the evidence in the record, I find that it is more likely than not that Ms. Y's child support based on her actual income would result in a monthly child support amount calculated under the formula in Alaska Civil Rule 90.3(a) of \$50 per month.¹⁴

2. Ms. Y is not unreasonably voluntarily underemployed.¹⁵

III. Discussion

Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on her or her "total income from all sources."¹⁶ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹⁷ Good cause includes a finding of unusual circumstances.¹⁸

Under Civil Rule 90.3, child support may be calculated based on a determination of potential income where there is voluntary unemployment or underemployment.¹⁹ A noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.²⁰ The custodial parent should not, be forced to finance the noncustodial parent's lifestyle choices if that choice is unreasonable given the duty to provide child support.²¹ A noncustodial parent should not always have to pay support based on their maximum earning capacity when they choose to earn less than they could, however.²² The Alaska Supreme Court has indicated that the circumstances surrounding an

¹³ Recording of Hearing- Testimony of Ms. Y.

¹⁴ Ex. 5, page 7 & Recording of Hearing.

¹⁵ Recording of Hearing.

¹⁶ Alaska Civil Rule 90.3(a)(1).

¹⁷ Alaska Civil Rule 90.3(c).

¹⁸ Civil Rule 90.3(c)(1)(A).

¹⁹ See Alaska Civil Rule 90.3, Commentary III, C.

²⁰ *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

²¹ *Olmstead v. Ziegler*, 42 P3d 1102 (Alaska 1987)

²² See *Pattee vs. Pattee*, 744 P.2d 659 (Alaska 1987).

obligor's failure to maximize earnings should be carefully considered, and then a determination made about whether, under all the circumstances in the case, income should be imputed.²³

Under the circumstances of this case, it is not appropriate to impute income to Ms. Y. Ms. Y's failure to earn significant income in 2009 and 2010 was due to her pregnancy and her unsuccessful attempts to find employment. Ms. Y has not been unreasonably voluntarily underemployed and her actual income would result in a minimum child support order. At this point in time, the evidence in the record does not show that making her best efforts to find employment, Ms. Y will probably earn enough during what remains of 2010 to justify setting support higher than a minimum order.

Ms. Y's support obligation should probably be revisited in 2011 through a modification action. At that time, Ms. Y will either have more work search history at her present location or she will be employed and by that time the custody situation may have changed. At present, Ms. Y's 2010 and ongoing child support obligation should be set at the \$50 minimum monthly amount permitted under Civil Rule 90.3(c)(1)(B), based on her actual income.

IV. Child Support Order

1. Ms. Y owes ongoing child support for K and B in the monthly amount of \$50, effective October 1, 2010.
2. Ms. Y is liable for child support arrears for K and B in the monthly amount of \$50 for the months of January 2009 through September 2010.
3. All other provisions of the Division's Amended Administrative Child Support and Medical Support Order issued on June 24, 2010 remain in effect.

DATED this 20th day of September, 2010.

By: _____
Mark T. Handley
Administrative Law Judge

²³ See *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 2002).

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 21st day of October, 2010

By: Signed _____
Signature
Jerry Burnett _____
Name
Deputy Commissioner _____
Title

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