

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

IN THE MATTER OF:)
)
S. T.) OAH No. 11-0162-CSS
) CSSD No. 001168584
_____)

DECISION AND ORDER

I. Introduction

S. T. appeals an Administrative Review Decision issued by the Child Support Services Division (CSSD). The child in this case is N., who is currently in foster care. A hearing was held on May 17, 2011. Ms. T. appeared by telephone. CSSD was represented in person by Child Support Specialist Erinn Brian.

Based on the evidence in the record, Ms. T.'s child support obligation should be set at \$127 per month for 2010 and \$224 per month for 2011.

II. Facts

A. Background

CSSD issued an Administrative Child Support and Medical Support Order on December 29, 2010.¹ Ms. T. requested an administrative review of that order.² The Administrative Review Decision upheld the prior support order.³ Ms. T. appealed.⁴

B. Material Facts

Ms. T. currently lives in No NameCity, Alaska.⁵ She is, however, about to move to Anchorage where her son is currently in foster care. She has previously worked for the No Name School District as a teacher's aide. Her last hourly wage at that job was \$24.46 per hour, and she worked full time during the school year. She left that job in December, 2008.⁶ In 2009 and 2010 she had some part time employment with various employers, including the No Name

¹ Exhibit 2. The findings of fact in this order are confusing. The order says that the income determination is based on actual information, but goes on to say that CSSD does not have actual income information. Exhibit 2, page 4. This order also assumed she could work as a teacher aide full time for 12 months per year. Exhibit 2, page 4. Most school district employees do not work a 12 month schedule.

² Exhibit 3.

³ Exhibit 4.

⁴ Exhibit 5.

⁵ Unless otherwise noted, factual findings are based on Ms. T.'s testimony.

⁶ Exhibit 6, page 2. Ms. T.'s testimony on whether she left this position in 2009 or 2008 was not entirely clear, but since her income in 2009 was significantly lower, it is more likely true that she left in December of 2008.

School District.⁷ She earned \$3,537.56 in 2009 and \$4,071.82 in 2010.⁸ She also received unemployment benefits of \$1,379.20 in 2009 and \$2,629.00 in 2010.⁹

From January 1, 2011 through March 15, 2011, Ms. T. worked 30 hours per week as a postal clerk earning \$13.00 per hour.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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." When calculating arrears for a particular year, if complete information as to what the parent earned during that year is available, then that information is used to calculate support even if the parent worked less than full time or worked sporadically during the year.¹¹ When calculating ongoing support, an estimate is made as to what the parent is likely to earn when the support is paid based on the best information available.¹² Best information may include the parent's current income, actual income from a prior year, the parent's prior wage rate, or the parent's work history and training.¹³ The person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁴

The arrears in this case would run from May 1, 2010 through January 31, 2011. Actual information is available as to what Ms. T. earned in 2010. She received \$4,071.82 in wages and \$2,629.00 in unemployment benefits. When those amounts are inserted in CSSD's online child support calculator, the resulting child support obligation is \$127 per month.¹⁵

Ms. T.'s ongoing support obligation must be based on what she can reasonably be expected to earn. In early 2011, Ms. T. was able to earn approximately \$3,900 as a postal clerk.¹⁶ This would equate to \$20,280 if she worked a full year at \$13 per hour and 30 hours per

⁷ Exhibit 6.

⁸ Exhibit 6, page 1.

⁹ Exhibit 6, page 2. When questioned by CSSD, Ms. T. different income figures shown in CSSD's Child Support Guidelines Worksheet, Exhibit 2, page 8. Ms. T. was testifying based on her recollection of what she would have earned in 2010. Exhibit 6 is an affidavit prepared from Department of Labor records, and is more likely to be an accurate representation of Ms. T.'s actual earnings and unemployment compensation.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ 15 AAC 125.050(b)(1).

¹² 15 AAC 125.050(c).

¹³ *Id.*

¹⁴ 15 AAC 05.030(h).

¹⁵ Attachment A.

¹⁶ She earned \$13 per hour, 30 hours per week and worked approximately 10 weeks from January through March 15.

week. She is not working at that job now, and will be moving to Anchorage soon. Ms. T. testified that some of her recent work before being a postal clerk was manual labor. While she has prior work experience as a teacher aide, she may not be able to obtain a similar job in Anchorage. Her work history suggests that she is likely to be employed sporadically.¹⁷ Given all of these factors, a reasonable estimate of what she will earn in 2011 is \$13,520. That is based on her most recent pay rate of \$13 per hour, 20 hours per week for 52 weeks. When that amount is inserted in CSSD's online child support calculator, the resulting child support obligation is \$224 per month.¹⁸

IV. Conclusion

Ms. T. has met her burden of showing that the child support calculation by CSSD is incorrect. Her arrears from May 1, 2010 through December 31, 2010 should be based on a child support obligation of \$127 per month, and for January 2011 the arrears should be based on a child support obligation of \$224 per month. Her ongoing child support obligation should be set at \$224 per month for one child.

V. Child Support Order

- Ms. T.'s Child Support obligation for May 1, 2010 through December 31, 2010 is set at \$127 per month;
- Ms. T.'s ongoing child support is set at \$224 per month effective January 1, 2011;
- All other provisions of the December 29, 2010 Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 20th day of May, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

¹⁷ There was no determination that Ms. T. was voluntarily and unreasonably unemployed or underemployed. Exhibit 2, page 4 & exhibit 4, page 2.

¹⁸ Attachment B.

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 6th day of June, 2011.

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

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