

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

IN THE MATTER OF:)	
)	OAH No. 11-0163-CSS
J. D. S.)	CSSD No. 001166878
_____)	

DECISION AND ORDER

I. Introduction

This case involves the custodian C. S.’s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in this case on March 23, 2011. The obligee child is T., who is one year old.

The formal hearing was held on May 17, 2011. The obligor, J. D. S., did not participate; the custodian participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on May 17, 2011.

The evidence received at the hearing supports a determination that Mr. S.’s child support for one child was correctly calculated to be \$270 per month for March 2010 through December 2010, but his earnings for 2011 are expected to be materially higher than 2010 thus supporting a \$325 per month child support obligation for one child from January 2011 and ongoing.

II. Facts

A. Proceedings

This is an establishment case initiated when a request for public assistance on behalf of T. was received by the State of Alaska. On January 20, 2011, CSSD served an Administrative Child Support and Medical Support Order on Mr. S. and Ms. S. establishing Mr. S.’s child support obligation at \$215 per month.¹ Ms. S. requested an administrative review which resulted in CSSD issuing an Amended Administrative Child Support and Medical Support Order on March 23, 2011 ordering Mr. S. to pay \$270 per month effective April 1, 2011 with arrears owing in the amount of \$3,510 from March 2010 through March 2011.² Ms. S. appealed

¹ Exh. 1.

² Exh. 3.

believing that the amount of child support was understated because it was not representative of Mr. S.'s actual income.³

The Office of Administrative Hearings ("OAH") sent Mr. S. a notice of the date and time for the hearing by certified mail. The notice was received and signed for May 5, 2011. Just before the hearing began a telephone call was placed to the number of record for Mr. S. and the number was answered by voice mail. A message was left on the voice mail informing Mr. S. that the hearing would proceed and providing a phone number for him to call should he wish to participate.⁴ Because Mr. S.'s notice was sent to the address he provided with his appeal,⁵ service of the notice was found to be effective and the hearing was conducted without his participation.

At the hearing, Ms. S. entered into evidence several new documents obtained in the concurrent custody proceeding⁶ including Mr. S.'s 2010 tax return and a paycheck summary.⁷ The paycheck summary showed Mr. S. has the capacity and opportunity to earn \$10.80 per hour.⁸ He also earns overtime.⁹

Using his ability to earn \$10.80 per hour at 40 hours per week, 52 weeks a year, Mr. S. is likely to earn \$22,464 in 2011.

B. Findings

1. Notice of the date and time for the hearing was sent by certified mail to Mr. S. at his last-known address;
2. The notice was delivered by certified mail to Mr. S.'s last-known address;
3. Mr. S. did not appear for the hearing;
4. CSSD correctly calculated Mr. S.'s child support at \$270 per month for March 2010 through December 2010. The record establishes that Mr. S. is likely to earn \$22,464 in

³ Exh. 4.

⁴ Because Mr. S was not the party requesting the hearing so 15 AAC 05.030(j) providing that if the person requesting the hearing fails to appear the record will remain open for ten days providing an opportunity for that person to show reasonable cause for failure to appear is inapplicable.

⁵ See Exh. 4 at pg. 1.

⁶ *S. v. S.* 3PA-10-0000CI.

⁷ Exh. 6, 7.

⁸ Exh. 7.

⁹ *Id.*

2011. Therefore his child support for one child is \$325 per month effective January 2011, and ongoing.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ Typically, child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. "The primary purpose of Rule 90.3 is to ensure that the child support orders are adequate to meet the needs of children, subject to the ability of parents to pay . . . The amount of support a child is entitled to receive from a particular parent is determined by that parent's ability to provide for the child."¹¹ The "ability to provide" is a function of a parent's income which will be earned when the support is to be paid.¹² Because the relevant amount is expected future income, the figure is necessarily speculative. The tribunal "must examine all available evidence to make the best possible calculation."¹³

CSSD calculated Mr. S.'s child support obligation for 2010 and 2011 from the actual income figures reported to the State of Alaska Department of Labor and Workforce Development Records for 2010 and the PFD. This amount is \$17,656.24.¹⁴ Using this gross income figure CSSD calculated Mr. S.'s child support obligation for one child to be \$270 per month. Ms. S. does not challenge CSSD's 2010 calculation but does challenge the propriety of using Mr. S.'s 2010 income to establish his 2011 child support obligation. She believes his annual income for 2011 is likely greater than \$17,656.24.

As the person requesting the hearing, Ms. S. has the burden of proving that CSSD's order is incorrect.¹⁵ She presented unchallenged evidence that in 2011 Mr. S. is capable of earning \$10.80 per hour.¹⁶ When annualized, this amounts to Mr. S. earning \$22,464 in 2011.¹⁷

Ms. S. also provided a copy of the Child Support Guidelines Mr. S. submitted in his custody case. That document is dated April 29, 2011 and notes that Mr. S. earns \$1,673.46 per

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

¹¹ Civil Rule 90.3, Commentary I B.

¹² Civil Rule 90.3, Commentary II, III E.

¹³ Civil Rule 90.3, Commentary III E.

¹⁴ Exh. 3 at 6.

¹⁵ 15 AAC 05.030(h).

¹⁶ Exh. 7.

¹⁷ \$10.80 x 2080 = \$22,464.

month. When annualized this amount totals \$20,081.52.¹⁸ Ms. S. has met her burden of proving by a preponderance of the evidence that CSSD's child support calculation for 2011 is incorrect. Now the correct figure must be determined.

The uncontroverted evidence establishes that Mr. S. has the ability to provide for T. earning \$10.80 per hour. This provides an annual income of \$22,464 per year. This calculation does not include overtime and it is still significantly less than his 2008 (\$31,020.57) and 2009 earnings a (\$38,942.01). Overtime is not included because it has not been established that overtime is a regular occurrence. The gross income amount using the amount provided for in the Child Support Guidelines Affidavit is a number provided by Mr. S. with no supporting documentation. Thus, while it supports a finding that child support for 2011 is incorrect, it is insufficient without more to rebut Ms. S.'s evidence. Therefore, in the absence of any additional evidence, Mr. S.'s child support should be calculated using an annual income of \$22,464 per year. An annual income of \$22,464 less allowable deductions results in monthly child support obligation for one child in the amount of \$325 per month.¹⁹

IV. Conclusion

Ms. S. did meet her burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Ms. S. has presented evidence sufficient to support a finding that child support should not be calculated base on Mr. S. earning \$22,464 and Mr. S.'s child support obligation for one child should be \$325 per month effective January 2011 and ongoing.

V. Child Support Order

- Mr. S. is liable for child support for T. in the amount of \$270 per month for one child for the period from March 2010 through December 2010 and \$325 per month for one child from January 2011 and ongoing.

¹⁸ \$1,673.46 x 12 = \$20,081.52

¹⁹ Attachment A.

- All other provisions of the Amended Administrative Child Support and Medical Support Order issued March 23, 2011 remain in full force and effect.

DATED this 18th day of May, 2011.

By: Signed
Rebecca L. Pauli
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 6th day of June, 2011.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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