

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

IN THE MATTER OF:)	
)	OAH No. 11-0214-CSS
L W. H)	CSSD No. 001168257
_____)	

DECISION AND ORDER

I. Introduction

The obligor, L W. H, appeals an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 26, 2011. The obligee child is R, six years of age. The custodian of record is J E. H.

The formal hearing was held on June 29, 2011, and August 15, 2011. Both parties appeared for the hearing. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. H's child support is set at \$175 per month from May 2010 through January 2011 due to his incarceration; and \$358 per month from February 2011, forward, based on his estimated income for 2011. Ongoing child support is suspended as of February 1, 2011, because the family is now intact.

II. Facts

A. Procedural History

Public assistance began to be paid on R's behalf in May 2010.¹ CSSD issued the initial administrative child support order on March 7, 2011, after which Mr. H requested an administrative review.² On April 26, 2011, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. H's ongoing child support at \$434 per month, with arrears of \$2,854 from May 2010 through March 2011.³ Both parties appealed on May 25, 2011.⁴ Prior to the hearing, CSSD submitted Mr. H's up-to-date earnings data from the Alaska Department of

¹ Exh. 1 at pg. 9.
² Exhs. 1-2.
³ Exh. 3.
⁴ Exh. 4.

Labor and revised child support calculations of \$175 per month for 2010 and \$358 per month for 2011.⁵

B. Material Facts

Based on the record as a whole, the material facts are established by a preponderance of the evidence based on the testimony of the parties and the documents submitted into evidence.

Mr. H and Ms. H and their child R constitute an intact family. Mr. H was incarcerated in April 2010 and the next month Ms. H began to receive public assistance benefits on R's behalf.

During the time that he was incarcerated in 2010, Mr. H participated in an ankle monitoring program and was able to spend a short period of time working in the community. The bulk of his income for 2010 was received during the first part of the year, prior to his incarceration. In total, his earnings for 2010 were \$11,698.56.⁶ He is not entitled to a PFD because of his criminal history, so his child support is calculated from that total income figure. According to CSSD's online child support calculator, the support amount for 2010 is \$175 per month.⁷

On November 16, 2010, Mr. H was returned to jail, where he served out the remainder of his sentence. He was released on January 15, 2011, and returned to the workforce. He worked briefly for No Name business, but he was terminated from that position because his employer could not adjust to his schedule for taking a college class. Mr. H began working for No Name business in March 2011, where he earns \$15 per hour. In addition, Mr. H is currently attending college and pursuing a bachelor's degree in no name technology.

CSSD estimated Mr. H's 2011 income at \$24,960 per month, based on his hourly wage of \$12 per hour while at the no name shop.⁸ A support amount calculated from this income figure is \$358 per month.⁹

Ms. H withdrew from child support services in February 2011. Ongoing child support is suspended so long as the family remains intact.

⁵ Exhs. 5-6.

⁶ Exh. 5.

⁷ Exh. 6.

⁸ Exh. 6 at pg. 2.

⁹ *Id.*

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ In cases established by CSSD, the agency collects support from the date the custodial parent requested child support services, or the date public assistance or foster care was initiated on behalf of the child(ren), up to a maximum of six years prior to the date the action was initiated.¹¹ Ms. H applied for and began receiving child support services in May 2010, so that is the month in which Mr. H's obligation to support R through CSSD should begin.¹²

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." CSSD correctly calculated his 2010 and ongoing child support at \$175 per month, based on his 2010 income. This figure is correct.

For 2011, CSSD attributed hourly wage of \$12 per hour to Mr. H, based on his employment at the welding shop. This results in a support amount of \$358 per month. This is the correct figure for Mr. H, beginning in February 2011, due to his employment at that time. Ongoing child support as of February 2011 has been suspended, and shall remain suspended so long as the family is intact. In the event Mr. H becomes liable to pay child support in the future and is not earning income sufficient to support a support amount of \$358 per month, he can file a modification of the ongoing support amount.

CSSD requested \$358 per month for January 2011, but the higher amount should not begin until February 2011, as Mr. H was still incarcerated for half of January 2011.

IV. Conclusion

Mr. H met his burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision was incorrect, as required by 15 AAC 05.030(h). His child support is now correctly calculated for 2010 and 2011, and CSSD's latest figures should be adopted.

V. Child Support Order

- Mr. H's child support is set at \$175 per month from May 2010 through January 2011; and \$358 per month from February 2011, forward;

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

¹¹ 15 AAC 125.105(a)(1)-(2).

¹² *See* Exh. 6 at pg. 3.

- Ongoing child support is suspended as of February 1, 2011, and shall remain suspended so long as the family is intact;
- All other provisions of the Amended Administrative Child and Medical Support Order dated April 26, 2011, remain in full force and effect.

DATED this 13th day of September, 2011.

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 30th day of September, 2011.

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

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