

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

IN THE MATTER OF:)	
)	OAH No. 11-0220-CSS
A S. N)	CSSD No. 001172618
_____)	

DECISION AND ORDER

I. Introduction

The obligor, A N, appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The child in this matter is A A. The custodial parent is K A.

A hearing was held on June 23, 2011. Both parents were present in person, and CSSD was represented by Child Support Specialist Erinn Brian. At the conclusion of the hearing, the record was left open to allow the submission of additional documents. Based on the evidence in the record, Mr. N's child support obligation is set at \$807 for December 2010, and at \$767 per month effective January 1, 2011.

II. Facts

A. Background

Ms. A requested services from CSSD on December 9, 2010.¹ An Administrative Child Support and Medical Support Order was issued on March 9, 2011.² This order set Mr. N's support obligation at \$612 per month for one child. Mr. N requested an administrative review of that order.³ Based on the administrative review, an Amended Administrative Child Support and Medical Support Order was issued increasing Mr. N's support obligation to \$823 per month.⁴ Mr. N appealed that decision, arguing that the order was based on his 2010 income and that his 2011 income will be significantly lower.⁵

¹ Exhibit 1.
² Exhibit 4.
³ Exhibit 5.
⁴ Exhibit 6.
⁵ Exhibit 7.

B. Material Facts

Mr. N works for no name business. During 2010, his total income was \$78,318.05.⁶ This included regular wages, overtime, incentive pay, success share, non cash prizes, Alaska Airline miles, and additional money to offset the taxes owed on the non-cash prizes and Alaska Airline miles.⁷ The non-cash prizes are small gifts such as coats or coffee mugs with the company logo on them.⁸ The success share is an annual bonus based on the company's earnings, and is not guaranteed.⁹ The Alaska Airline miles can be used by the employee, or sold.¹⁰ Mr. N contributes 10% of his gross wages to his 401k retirement plan.

Mr. N earned nearly \$10,000 in overtime in 2010.¹¹ No name business has hired additional employees and taken other steps to reduce overtime, and anticipates paying less overtime to employees such as Mr. N during 2011.¹²

Mr. N's pay report for the period ending May 31, 2011 shows year to date gross earnings \$29,328.33.¹³ The breakdown of these earnings is shown in the following chart:

Description	YTD Amount
Float	147.20
Holiday	443.12
Annual Leave	2,192.59
Time Entry Wages	18,315.24
Non-Cash Prize	499.00
Overtime Premium	1,793.71
Success Share	2,738.66
AK Air Miles	2,425.00
Tax Offset	773.81
Total Gross Income	29,328.33

⁶ Exhibit 10, page 1.
⁷ Testimony of Mr. N; Exhibit 9.
⁸ Exhibit 9.
⁹ Testimony of Mr. N; Exhibit 9.
¹⁰ Exhibit 9.
¹¹ Exhibit 10, page 2.
¹² Exhibit 9; Exhibit 2, page 1.
¹³ Exhibit 10, page 4.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁴ 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." The person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁵ Child support is calculated based on the amount the obligor will earn when the support is to be paid.¹⁶ Income includes overtime, bonuses, and other types of payments to an employee,¹⁷ including

Prerequisites [sic] or in-kind compensation, such as employer provided housing and transportation benefits, to the extent that they are significant and reduce living expenses.^{18]}

Mr. N argued that the non-cash prize amount, the Alaska Airline miles, and the tax offset should not be included in his income because there is no real money involved.¹⁹ The air miles and other non-cash prizes do have a value, and Mr. N is taxed on that value. The tax offset amount is money that Mr. N receives as part of his pay check that he can use to pay his taxes or for any other purpose. That money is included in his total income for child support purposes.

The Alaska Airline miles also have value to Mr. N. He can use them to reduce the cost of his personal travel for vacations, or he can sell them for cash. He received approximately \$3,000 worth of air miles in 2010,²⁰ and has received over \$2,400 worth through May of 2011.²¹ The value of these air miles is significant, and they do reduce Mr. N's personal living expenses. Accordingly, they are included in his income for child support purposes.

Mr. N also received approximately \$9,000 in non cash prizes in 2010,²² and has received \$499 worth of non cash prizes through May of 2011.²³ These amounts are also significant, but they are not the type of prize that would reduce living expenses. Prizes that reduce living expenses would include items that Mr. N would have had to purchase for himself if he did not

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ 15 AAC 05.030(h).

¹⁶ Civil Rule 90.3, Commentary III.E.

¹⁷ 15 AAC 125.030(a).

¹⁸ 15 AAC 125.030(a)(19).

¹⁹ Exhibit 5, page 13.

²⁰ Exhibit 10, page 2.

²¹ Exhibit 10, page 4.

²² Exhibit 10, page 2.

²³ Exhibit 10, page 4.

receive them as a prize. The items awarded to Mr. N are not things he would necessarily purchase on his own if his employer did not give them to him. The prizes do not reduce his living expenses, and therefore are not included in his income for child support purposes.

In 2010, Mr. N's total wages were \$78,318.05.²⁴ This included \$9,053.00 in non-cash prizes.²⁵ Thus, the amount used to calculate his child support obligation for December 2010 is \$69,265.05. Mr. N also contributes to his 401k plan. The maximum deduction allowed for his retirement contribution is 7.5%.²⁶ Using CSSD's online child support calculator, the amount of Mr. N's child support obligation in 2010 is \$807 per month for one child.²⁷

Mr. N's total 2011 income can be estimated from his pay slip for the period ending May 31, 2011.²⁸ His year to date earnings were \$29,328.33. The success share and the non-cash prize amounts should be subtracted from this, leaving \$26,090.67.²⁹ This is equivalent to annual income of \$62,617.61.³⁰ The onetime payment of the success share is then added back to this amount for Mr. N's 2011 expected income of \$65,356.27. Based on this income, Mr. N's ongoing child support obligation beginning January 1, 2011 is \$767 per month for one child.³¹

The amount of Mr. N's child support obligation is different than that calculated by CSSD. For 2010, CSSD did not subtract the value of the non-cash prizes from Mr. N's total income. As discussed above, the receipt of these prizes does not reduce Mr. N's living expenses and should not be included in the child support calculation.

For 2011, CSSD did subtract the value of the non-cash prizes. CSSD also excluded Mr. N's overtime, bonus, and Alaska Airline miles.³² The amounts receive by Mr. N through May in overtime, annual bonus, and air miles exceed the expected amount of the annual Permanent Fund Dividend payment, which is included as income. These amounts are significant. Overtime

²⁴ Exhibit 10, page 1.

²⁵ Exhibit 10, page 2.

²⁶ Civil Rule 90.3(a)(1)(B).

²⁷ Attachment A.

²⁸ Exhibit 10, page 4.

²⁹ The success share is a bonus that Mr. N did in fact earn this year, but it is a once a year payment that should not be included when annualizing his January through May earnings.

³⁰ $\$26,090.67 \div 5 \text{ months for a monthly average of } \$5,218.134$. This amount is then multiplied by 12 for the annual income.

³¹ Attachment B.

³² Proposed Calculations submitted by CSSD after the hearing.

wages and the bonus are received as cash, and thus would normally be included as income.³³ As discussed above, the Alaska Airline miles are also included as income.

Mr. N's employer did provide statements that he would receive little to no overtime income during 2011. His payroll records show that he is earning less overtime this year, but he has earned a significant amount through the first five months. It is reasonable to assume he will continue earning overtime income at this same rate through the rest of the year.

Mr. N also questioned whether support should be awarded based on shared custody. A stays with Mr. N two nights each week, as well as occasional additional nights.³⁴ To qualify for shared custody, Mr. N must show that A stays with him at least 30 % of the time.³⁵ Two nights out of seven is 28.6% of the time. Mr. N has not shown that the occasional additional overnights occur often enough to qualify for shared custody.

IV. Conclusion

Mr. N's income from his employer includes a variety of cash and non-cash payments. With the exception of the non cash prizes, all of these payments are included as income in calculating child support. Based on Mr. N's income, his child support obligation should be \$807 per month for one child in 2010, and \$767 per month for one child in 2011.

V. Child Support Order

- Mr. N's child support obligation is set at \$807 per month for the month of December 2010.
- Mr. N's ongoing child support obligation is set at \$767 per month effective January 1, 2011.
- All other provisions of the May 12, 2011 Amended Administrative Child and Medical Support order remain in effect.

DATED this 7th day of July, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

³³ 15 AAC 125.030(a)(1) & (5).

³⁴ Exhibit 3, page 1; Mr. N's testimony.

³⁵ Civil Rule 90.3(f)(1).

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 26th day of July, 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.]