

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

IN THE MATTER OF:)	
)	OAH No. 11-0226-CSS
H A. K, JR.)	CSSD No. 001161482
_____)	

DECISION AND ORDER

I. Introduction

The obligor, H A. K, Jr., appeals an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on May 9, 2011. The obligee child is K, three years of age. The custodian of record is R J. A.

The formal hearing was held on June 22, 2011. Mr. K appeared by telephone with counsel; Ms. A. did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, CSSD’s Administrative Review Decision is affirmed.

II. Facts

A. Procedural History

Ms. A applied for child support services on August 31, 2010.² On March 2, 2011, CSSD issued an Administrative Child Support and Medical Support Order that set Mr. K’s child support at \$501 per month, effective August 2010.³ Mr. K requested an administrative review and filed a petition for genetic testing.⁴ CSSD denied the petition for genetic testing on the basis that Mr. K had signed an affidavit of paternity regarding K.⁵ On May 9, 2011, CSSD issued an Administrative Review Decision that affirmed its earlier administrative child support order.⁶

¹ Before the hearing, telephone calls were placed to both of Ms. A’s contact numbers so she could participate. Neither call was answered so a voicemail message was left for her to call the OAH. As of this writing, Ms. A has not contacted the office.

² Pre-Hearing Brief at pg. 1.

³ Exh. 2.

⁴ Exhs. 3-4.

⁵ Exh. 5.

⁶ Exh. 6.

Mr. K appealed on June 6, 2011, asserting that CSSD used the wrong income figures, he is unemployed and there is no work available.⁷

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 Mr. K and the documents submitted into evidence.

Mr. K lives in the Bethel area. For several years he worked at No Name business, where he earned \$45,784.20 in 2008 and \$45,618.60 in 2009.⁸ He did not complete 2010 at no name business; rather, Mr. K quit his job there on September 20, 2010. His testimony was somewhat vague about the reasons he left. He stated that he quit because he could not work on the swing shift anymore, partly because of the recurrence of a hernia, which he blamed on snow machining, cigarettes and chewing tobacco. However, in response to requests to elaborate on the reasons he quit his job at No Name business, Mr. K also alluded to other factors such as disagreements with his coworkers, the stress of being on the swing shift, losing his hearing and being tired of working there.

After leaving No Name business Mr. K was unemployed for just under two months – on November 10, 2010, he started working for No Name business. He initially worked as a laborer doing weatherizations, but No Name business sent him to boiler school and eventually he will be travelling outside of No Name city and working on residential boilers for \$18 per hour. At No Name business, his wage was \$18.36 per hour. His total income in 2010 was \$34,792.98.⁹

At the time of the hearing Mr. K was unemployed again, this time beginning on March 15th. He had surgery to repair his hernia on June 1st and was planning on returning to work on July 15th, a total absence of about 2 months. He did not think he would be working full-time at first so that he could heal completely from his surgery.

III. Discussion

Mr. K filed the appeal and requested the hearing in this matter. He is not challenging the calculation of his arrears at \$501 per month, only the ongoing child support amount. He claims that his income has gone down due to his health problems and the resulting change in his employment. As the person who filed the appeal, Mr. K has the burden of proving by a

⁷ Exh. 7.

⁸ Exh. 8.

preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.¹⁰

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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.¹² Ms. A applied for child support services on August 31, 2010, so that is the month in which Mr. K's obligation to support K through CSSD should begin.¹³

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." As can be seen in the earning figures Mr. K's employers reported to the Alaska Department of Labor and Workforce Development, he earned \$45,784.20 in 2008; \$45,618.60 in 2009 and \$34,792.98 in 2010.¹⁴ CSSD calculated his 2010 and ongoing child support at \$501 per month, based on his 2010 income.¹⁵ This figure is correct and Mr. K does not contest it. He is challenging the use of that same income figure for the 2011 calculation of his child support obligation. He claims his current income is lower and so his child support for 2011 (and ongoing) should also be lower.

The obligor parent has the burden of proving his or her earning capacity.¹⁶ A parent who claims he or she cannot maintain a certain level of work or pay child support because of a disability or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.¹⁷ Other than the testimony about his hernia injury and surgery, Mr. K did not provide any evidence of his injury, or even a doctor's note stating he was off work until July 15th. Thus, he did not meet the evidentiary standard regarding his health issues. However, from a practical standpoint, Mr. K's testimony about his surgery and eventual return to work was credible, so there is no significant factual dispute whether he was off work for two months to heal from his hernia repair. Unfortunately, the bottom line for Mr. K is that even

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Id.

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15 AAC 05.030(h).

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

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15 AAC 125.105(a)(1)-(2).

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See Exh. 1 at pg. 1.

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Exh. 8.

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Exh. 2 at pg. 7.

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Kowalski v. Kowalski, 806 P.2d 1368, 1372 (Alaska 1991).

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Id. at 1371.

if his testimony is sufficient to prove he was off work for the period of time necessary to repair a hernia injury, he still has not proven that his earning capacity is lower than it was in 2010, when he was also off work for about two months. Mr. K will be returning to work shortly and already will be earning an hourly wage that is within 40 cents of his final hourly wage at No Name business. Mr. K may have been unemployed for a short period of time to repair an injury, but as CSSD argued in its closing statement, his medical problems were temporary. Mr. K has not met his burden of proving that his earning capacity has changed significantly from the level established by his 2010 income.

IV. Conclusion

Mr. K did not meet 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). Mr. K is liable for child support of \$501 per month and CSSD's decision should be affirmed.

V. Child Support Order

- CSSD's Administrative Review Decision dated May 9, 2011, is affirmed.

DATED this 11th day of July, 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 29th day of July, 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.]