

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

IN THE MATTER OF:)	
)	OAH No. 11-0252-CSS
J K. H)	CSSD No. 001168308
_____)	

DECISION AND ORDER

I. Introduction

This is an establishment case based on an application for public assistance. The obligor parent is J H. D L is the custodian of record, and the child in this matter is C H.

A hearing was held on July 18, 2011. Both parents appeared by telephone. Child Support Services Division (CSSD) was represented by Child Support Specialist Erinn Brian. Based on the evidence in the record, Mr. H's child support should be set at \$110 per month for 2010, and \$224 per month for 2011.

II. Facts

A. Background

An Administrative Order to Provide Financial and Medical Insurance Information was issued to Mr. H on January 25, 2011.¹ An Administrative Child Support and Medical Support Order was issued on March 16, 2011, setting Mr. H's child support obligation at \$226 per month.² Mr. H requested an Administrative Review.³ The original order was upheld after that review.⁴ Mr. H appealed that decision and requested a formal hearing.⁵

B. Material Facts

Mr. H received a total of \$5297 in unemployment benefits in 2010.⁶ He had no other income in 2010 other than a Permanent Fund Dividend check.⁷ Mr. H continued receiving

1 Exhibit 1.
2 Exhibit 3.
3 Exhibit 4.
4 Exhibit 5.
5 Exhibit 6.
6 Exhibit 2, page 1.
7 Testimony of Mr. H; Exhibit 2, page 3.

unemployment benefits at the rate of \$506 per month through April 25, 2011, when he obtained his current job.⁸ He now earns \$8 per hour and works 32 to 37 hours per week.

An order effective July 1, 2011 was recently issued by the court.⁹ That order provides for a child support payment and for shared custody of the couple's child.¹⁰

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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.¹² Child support is based on the obligor parent's income during the time in which the support is due.¹³ During 2010 Mr. H only earned unemployment benefits and a Permanent Fund Dividend. Based on that income, his support obligation for 2010 is \$110 per month for one child.¹⁴

Mr. H continued earning unemployment benefits through April 25, 2011. Those benefits should total approximately \$1,940.¹⁵ As of April 25, Mr. H has been working at No Name in No Name city. He testified that he worked an average of 34 ½ hours per week at \$8.00 per hour, or \$276 per week. At \$276 per week, Mr. H would earn a total of \$9,936 for the remainder of the year. Mr. H also earned \$1,552 in overtime wages prior to June 18, 2011.¹⁶ That amount should be included in his income,¹⁷ for a total of \$11,488 in wages for 2011. Using CSSD's online support calculator, Mr. H's child support obligation for 2011 would be \$224 per month for one child.¹⁸

Mr. H asserted that he is not earning enough to pay this amount of child support. Child support is calculated based on a percentage of the obligor parent's adjusted income.¹⁹ A

⁸ Testimony of Mr. H; Exhibit 2, page 2.

⁹ Testimony of Mr. H; Testimony of Ms. L.

¹⁰ One or both parents should provide a certified copy of this order to CSSD.

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² 15 AAC 05.030(h).

¹³ Civil Rule 90.3, Commentary III.E.

¹⁴ Exhibit 3, page 7.

¹⁵ \$422 for the partial month of April, plus \$506 for January, February, and March.

¹⁶ Exhibit A, page 1.

¹⁷ Overtime wages are generally included in total income. Civil Rule 90.3, Commentary VI.B.9.

¹⁸ Attachment A.

¹⁹ Civil Rule 90.3(a)(2).

different amount may be awarded only when it is proven by “clear and convincing evidence that manifest injustice would result if the support award were not varied.”²⁰

Total household income and expenses are looked at in determining whether paying child support would create a hardship such that the amount of the award should be varied. In addition to Mr. H’s income, he lives with his girlfriend who receives \$820 per month in public assistance plus \$300 per month in food stamps. Her mother has been paying the monthly payments for the couple’s new 2012 automobile.

The expenses listed on Mr. H’s Hardship Checklist total \$2,272 per month, without including any child support obligations. This also does not include paying towards any past debt Mr. H has occurred. The household’s total income, before counting any Permanent Fund Dividends, is slightly more than total expenses plus the child support amount. Mr. H has not shown by clear and convincing evidence that manifest injustice would result from paying child support based on the percentage of income formula in Civil Rule 90.3.²¹

IV. Conclusion

This child support order establishes Mr. H’s support obligation through the date that the Superior Court’s order becomes effective. For 2010, Mr. H’s support obligation should be set at \$110 per month for one child. During 2011, his support obligation should be set at \$224 per month for one child.

V. Child Support Order

- Mr. H’s child support obligation is set at \$110 per month for July 1, 2010 through December 31, 2010;
- Mr. H’s ongoing child support obligation is set at \$224 per month effective January 1, 2011;
- The ongoing support remains in effect until such time as the Superior Court’s order becomes effective or this order is otherwise modified; and

²⁰ Civil Rule 90.3(c)(1).

²¹ Because Mr. H has not proven a hardship, it is not necessary to compare the relative hardships between Mr. H’s household having to pay this amount and Ms. L’ household if child support were reduced.

- All other provisions of the March 16, 2011 Administrative Child and Medical Support order remain in effect.

DATED this 26th day of July, 2011.

By: Signed
Jeffrey A. Friedman
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 11th day of August, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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