

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

IN THE MATTER OF:)	
)	OAH No. 11-0284-CSS
N T. W)	CSSD No. 001173697
_____)	

DECISION AND ORDER

I. Introduction

The obligor, N T. W, appeals an Administrative Review Decision that the Child Support Services Division (CSSD) issued in his case on July 7, 2011. The obligee child is A, four years of age. The custodian of record is R L. G.

The formal hearing was held on August 15, 2011. Both Mr. W and Ms. G appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. W is not voluntarily and unreasonably unemployed. He is liable for child support for A in the amount of \$108 per month, effective January 1, 2011, and ongoing.

II. Facts

A. Procedural History

Ms. G began receiving public assistance on A's behalf in January 2011.¹ CSSD issued an Administrative Child Support and Medical Support Order that set Mr. W's child support at \$260 per month, beginning in January 2011.² He requested an administrative review and filed a 2010 tax return.³ On July 7, 2011, CSSD issued an Administrative Review Decision that affirmed its earlier administrative child support order.⁴ Mr. W appealed on July 18, 2011, asserting that he did not think he should be liable for paying support for time periods prior to Ms. G's entry into a drug treatment program about two months earlier.⁵ Prior to the hearing CSSD

¹ Pre-Hearing Brief at pg. 1.
² Exh. 1.
³ Exh. 2.
⁴ Exh. 3.
⁵ Exh. 7.

prepared another child support calculation in the amount of \$90 per month, based on Mr. W's 2010 income tax return.⁶

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. W and the documents submitted into evidence.

In 2010, Mr. W received earnings of \$2,800, other taxable earnings of \$1,500, and self-employment income from carving and Native artwork of \$1,200.⁷ Those income figures, plus the PFD of \$1,281 equals total annual income of \$6,781 that Mr. W received in 2010. A child support amount calculated from this total income figure equals \$108 per month.⁸

Mr. W has medical problems – most notably, arthritis – that have led his physician to restrict him from working in jobs involving manual labor.⁹ As a result, Mr. W attended a vocational program from August 2010 through January 2011 and received two certifications in computer-related work.

On June 27, 2011, Mr. W began working full-time at a local telecommunications company, earning \$13.65 per hour doing internet technical support. However, Mr. W had the flu and then was in an automobile accident fairly soon thereafter. He was excused from work for both events but had not been at the company long enough to qualify for job protection for medical leave. He was terminated on August 12, 2011.¹⁰

III. Discussion

Mr. W filed the appeal in this matter and thus has the burden of proving by a preponderance of the evidence that CSSD's Administrative Review Decision is incorrect.¹¹ Although Mr. W did question the effective date of his support obligation, the primary issue concerns whether he should be considered voluntarily and unreasonably unemployed for purposes of calculating his child support obligation.

⁶ Exh. 8.
⁷ Exh. 2 at pgs. 2-5.
⁸ Attachment A.
⁹ Exh. 6 at pg. 1.
¹⁰ Exh. 7.
¹¹ 15 AAC 05.030(h).

A. *Child Support Calculation*

A parent is obligated both by statute and at common law to support his or her children.¹² 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.¹³ Ms. G applied for and began receiving public assistance on A's behalf in January 2011, so that is the month in which Mr. W's obligation to support the child through CSSD should begin.¹⁴ Mr. W claims he should not be liable for paying child support for time periods prior to Ms. G's entry into treatment, but there is no provision in CSSD's regulations that allow an obligor to avoid paying support on that basis. His obligation is to his child; since the State of Alaska was providing her with public assistance, Mr. W must reimburse the State for the benefits that were expended on her behalf.

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 obligor has the burden of proving his or her earning capacity.¹⁵ After Mr. W presented his testimony at the hearing, CSSD asserted that the obligor is voluntarily unemployed and that his child support should be set at \$421 per month, which was calculated based on full-time employment paid at \$13.65 per hour.¹⁶ If a parent is found to be voluntarily and unreasonably unemployed, his or her child support amount may be calculated from that parent's "potential income," which should be based on his or her "work history, qualifications and job opportunities."¹⁷

CSSD's claim that Mr. W is voluntarily and unreasonably unemployed may be valid in the future, but it is premature at this point. At the time of the hearing, Mr. W had been unemployed for only a short period of time, so there is insufficient evidence to prove that his unemployment is anything other than a temporary circumstance that will change when he obtains other employment. The record simply does not yet establish that Mr. W is voluntarily and unreasonably unemployed. As a result, his child support should be calculated based on his most recent documented income, which is his 2010 income tax return; CSSD did not file income

¹² *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹³ 15 AAC 125.105(a)(1)-(2).

¹⁴ See Pre-Hearing Brief at pg. 1.

¹⁵ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁶ Exh. 8 at pg. 1.

¹⁷ Civil Rule 90.3(a)(4).

information for Mr. W from the Alaska Department of Labor and Workforce Development. Mr. W's child support obligation for 2011 is now correctly calculated at \$108 per month, based on his 2010 income.

IV. Conclusion

Mr. W 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). Mr. W's child support has been correctly calculated at \$108 per month from January 2011 through December 2011, and ongoing. This calculation should be adopted.

V. Child Support Order

- Mr. W is liable for support for A in the amount of \$108 per month, effective from January 2011 through December 2011, and ongoing;
- All other provisions of CSSD's Administrative Review Decision dated July 7, 2011, remain in full force and effect.

DATED this 30th day of December, 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 17th day of January, 2012.

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

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