

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

IN THE MATTER OF)	
N M. C)	OAH No. 11-0307-CSS
_____)	CSSD No. 001164806

DECISION AND ORDER

I. Introduction

This case is N M. C’s appeal of the order establishing his child support obligation for his child, J. The Child Support Services Division (Division) issued this order. Mr. C’s appeal was referred to the Office of Administrative Hearings and assigned to Administrative Law Judge Mark T. Handley.

On August 24, 2011, a hearing was held to consider Mr. C’s appeal. Mr. C participated. A M. K, the custodian of record, also participated. The Division was represented by Russell Crisp, Child Support Services Specialist. The hearing was audio-recorded. The record closed at the end of the hearing.

The Division’s order is upheld because Mr. C did not meet his burden of proof to show that this order was incorrect.

II. Facts

In October of 2008, Ms. K applied for public assistance for J.¹ Paternity was established by an administrative paternity order after an acknowledgement of paternity.²

The Division served Mr. C with an Administrative Child and Medical Support Order on February 9, 2011.³ Mr. C appealed his child support order.⁴

The Division issued an Amended Administrative Child and Medical Support Order on April 26, 2011.⁵ In this order, the Division set Mr. C’s monthly ongoing child support obligation for J at \$260. This monthly ongoing child support obligation in this order was calculated using full-time minimum wage earnings plus a PFD.⁶

¹ Exhibit 6, page 12.
² Exhibit 1-3.
³ Division’s Pre Hearing Brief, page 1 & Exhibit 4.
⁴ Exhibit 5.
⁵ Exhibit 6.
⁶ Exhibit 6, page 11.

The order also established arrears beginning in October of 2008. The order set the monthly child support at \$126 for the months of October through December of 2008 based on Mr. C's 2008 income. The order set arrears at the minimum monthly amount of \$50 for 2009 and 2010, based on Mr. C's low income.⁷ Mr. C requested a formal hearing.⁸

Prior to the hearing, the Division provided information on reported earnings from Mr. C's employers. This information showed that Mr. C earned \$8,799.56 during the second quarter of 2011.⁹ Annual minimum wage income is only \$16,120.¹⁰ This is less than twice what Mr. C earned in one quarter of this year.

At the hearing, Mr. C explained that he was not disputing the Division's determination that he could earn an annual income equal full-time minimum wage earnings plus a PFD. Mr. C admitted that he earned \$16 per hour at his current job, but explained that he only worked part-time and had not worked during the past two weeks. Mr. C is 20 years-old and works in construction as a laborer.¹¹

Based on the evidence in the record, I find Mr. C did not show that the Division's determinations in setting his child support were incorrect.¹²

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. C has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³

Mr. C did not meet his burden to show that it was more likely than not that the estimates of Mr. C's income, which the Division used to set his child support, were incorrect. Mr. C's questions about his child support order were addressed at the hearing.

Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."¹⁴ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹⁵ Good cause includes a finding of unusual

⁷ Exhibit 6, page 12.

⁸ Exhibit 7.

⁹ Exhibit 8.

¹⁰ Exhibit 6, page 11.

¹¹ Recording of Hearing- Testimony of Mr. C.

¹² Recording of Hearing & Exhibit 8.

¹³ Alaska Regulation 15 AAC 05.030(h).

¹⁴ Alaska Civil Rule 90.3(a)(1)

¹⁵ Alaska Civil Rule 90.3(c).

circumstances.¹⁶

Income can also be imputed to an obligor in cases of unreasonable voluntary underemployment.¹⁷ The Alaska Supreme Court has recognized that an obligor parent should not be locked into a particular job or field, nor prevented from seeking personal or professional advancement.¹⁸ On the other hand, a noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.¹⁹ When income is imputed to an obligor in cases of unreasonable voluntary underemployment, the parent's earning capacity is used to estimate the parent's potential income, rather than using the parent's actual income to calculate the monthly child support obligation.²⁰

Mr. C did not assert that he suffers from any disability that prevents him from maintaining full-time employment. Mr. C lives in no name city, Alaska where unemployment is low. Mr. C earns more than twice the minimum hourly wage in his current part-time job. Mr. C failed to show either that it is more likely than not that he will not or cannot earn an annual income equal to the amount used to set his current ongoing child support order.

IV. CHILD SUPPORT ORDER

The Division's Amended Administrative Child and Medical Support Order issued on April 26, 2011 is affirmed.

DATED this 25th day of August, 2011.

By: Signed
Mark T. Handley
Administrative Law Judge

¹⁶ Civil Rule 90.3(c)(1)(A).

¹⁷ Alaska Civil Rule 90.3(a)(4).

¹⁸ See *Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

¹⁹ *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

²⁰ *Laybourn v. Powell*, 55 P.3d 745, 747 (Alaska 2002).

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 13th day of September, 2011

By: Signed
Signature
Mark T. Handley
Name
Administrative Law Judge
Title

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