

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

IN THE MATTER OF)	OAH No. 11-0438-CSS
G E. T)	CSSD No. 001175202
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is G E. T’s appeal of an order issued by the Alaska Child Support Service Division (Division). That order established his child support obligation for his child, P. On December 1, 2011, a formal hearing was held on Mr. T’s appeal.¹ The custodial parent, S H, participated. Mr. T also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concluded that the amounts set in the Division’s Amended Administrative Child and Medical Support Order should be adjusted in accordance with the new calculations at exhibit 14, which were discussed at the hearing. These new calculations are based on the Division’s estimate of Mr. T’s 2011 income based on updated information and give Mr. T the appropriate deduction for paying into retirement. Based on these calculations, Mr. T’s ongoing child support is set at \$483 per month. Mr. T’s child support arrears going back to April of 2011 are also set at \$483 per month. Mr. T failed to meet his burden of proof to show that his ongoing child support beginning in 2012 should be reduced due to the possibility that he will earn less overtime pay in future years.

II. Facts

Ms. H applied for the Division’s services for her child, P, on April 12, 2011.² Paternity is not now in dispute. Mr. T’s paternity of P was established in an administrative order after genetic testing. That order was not appealed.³

The Division served Mr. T with an Administrative Child and Medical Support Order on

¹ The hearing was held under Alaska Statute 25.27.170.
² Division’s Pre-hearing Brief, page 1 & Exhibit 1.
³ Division’s Pre-hearing Brief, page 1, Exhibit 2-5. & Recording of Hearing.

August 27, 2011. In this order, the Division set Mr. T's ongoing child support at \$490 per month. The order also set monthly arrears in that amount going back to April of 2011.⁴ Mr. T requested an administrative review and provided more income information.⁵

The Division issued an Administrative Review decision affirming the Administrative Child and Medical Support Order on October 24, 2011.⁶

Mr. T requested a formal hearing.⁷ Prior to the hearing, the Division filed new calculations.⁸ The Division also discussed these new calculations at the hearing. At the hearing, the Division argued that, in accordance with these new calculations, arrears and ongoing child support should be set at \$483 per month.⁹

Mr. T argued that his ongoing child support should be set lower based on his employer's plan to reduce overtime. Prior to the hearing, Mr. T had provided a letter from his employer, No Name, which was dated November 4, 2011. In this letter, Mr. T's employer provided information about Mr. T's earnings and wages, and explained that its business needs were changing and that it was "reducing/eliminating" overtime throughout the facility where Mr. T works. Mr. T explained that he worked in a no name for a company that provides no name construction materials. Mr. T admitted that he had received some overtime on his last paycheck.¹⁰

The Division explained that its latest calculations used an estimate of Mr. T's projected 2011 income which was based on the updated income information provided in Mr. T's employer's letter. This estimate does not project any more overtime pay in 2011 after the date of the letter, and gives Mr. T a deduction for his retirement contributions. The Division argued that despite the explanation in the letter regarding overtime, this projection provided not only the best estimate on Mr. T's 2011 income but also the best estimate of his income for 2012 and ongoing. The Division provided Mr. T's earnings income from prior years and argued that Mr. T's projected income for 2011 was consistent with his earnings in prior years.¹¹

Based on the evidence in the record, I find that it is more likely than not that these new

⁴ Exhibit 6.

⁵ Exhibits 7-10.

⁶ Exhibit 11.

⁷ Exhibit 12.

⁸ Exhibit 14.

⁹ Recording of Hearing.

¹⁰ Recording of Hearing-Testimony of Mr. T & Exhibit 10.

¹¹ Recording of Hearing & Exhibits 10, 13 & 14.

calculations are correct and that the income used in these calculations is correct. Based on the evidence in the record, I also find that it is more likely than not that these calculations are based on the best estimate of Mr. T's 2012 and ongoing income and earning capacity.¹²

III. Discussion

Mr. T argued that his ongoing child support should set be lower than the amount set by the Division. In a child support hearing, the person who filed the appeal, in this case Mr. T has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³ Mr. T met his burden to show, and the Division agreed, that Mr. T's child support order should be adjusted downward in accordance with the Division's new calculations, but Mr. T did not show that his child support should be further reduced by using his base-pay with no future overtime to calculate his ongoing monthly child support obligation.

Child support should be set based the income earned when the child support will be paid.¹⁴ The Division's order is based on the best estimate of Mr. T's 2011 income. 2011 is not over yet. Mr. T was still earning overtime as recently as his last pay period. The Division correctly calculated Mr. T's ongoing child support on his 2011 income. Mr. T may wish to request a modification if his income drops significantly during 2012. There is not yet persuasive evidence that Mr. T's ongoing child support should set based on income below what he is projected to earn in 2011.

IV. CHILD SUPPORT ORDER

1. Mr. T's ongoing child support for P is at \$483 per month effective January 1, 2012.
2. Mr. T is liable for child support arrears for P in the monthly amounts of \$483 for the months of April 2011 through December 2011.
3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for P.

¹² Recording of Hearing & Exhibit 14.

¹³ Alaska Regulation 15 AAC 05.030(h).

¹⁴ Alaska Civil Rule 90.3, Commentary III.E.

4. All other provisions of the Administrative Review Decision issued October 24, 2011 and the Administrative Child and Medical Support Order issued on August 17, 2011 remain in effect.

DATED this 15th day of December, 2011.

By: Signed
Mark T. Handley
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 4th day of January, 2012.

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

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