

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

In the Matter of:)

J A. H)

OAH No. 12-0021-CSS

CSSD No. 001174445

DECISION AND ORDER

I. Introduction

This matter involves the establishment of a child support obligation amount. The obligor parent is J A. H. The custodial parent of record is T D. D, and the child in this case is M H.

A hearing was held on February 16, 2012. Mr. H appeared by telephone. The Child Support Services Division (CSSD) was represented by Child Support Specialist Andrew Rawls, who also appeared by telephone. An initial proposed decision was issued on February 24, 2012. CSSD and Ms. D both submitted proposals for action pursuant to AS 44.64.060(e). This matter was remanded to take additional evidence concerning Mr. H's income, and a supplemental hearing was held on April 10, 2012. Mr. H and Mr. Rawls both participated by telephone. Ms. D participated by telephone for a portion of the hearing, but the phone connection was lost before the hearing concluded. Based on the evidence in the record, Mr. H's child support obligation should be set at \$266 per month until his older child turns 18, and then set at \$352 per month.

II. Facts

A. Background

On March 28, 2011, CSSD received a Uniform Interstate Family Support Act petition from the State of Texas asking CSSD to establish paternity and a child support obligation amount.¹ After establishing paternity,² CSSD issued an Administrative Child Support and Medical Support Order.³ This order set Mr. H's support obligation at \$1,032 per month for one child. Mr. H requested an administrative review of that determination.⁴ On review, CSSD

¹ Exhibit 1.

² Exhibit 4, Order dated August 24, 2011.

³ Exhibit 5.

⁴ Exhibit 6.

upheld the original support determination, and Mr. H appealed.⁵ He provided tax returns and other information with his appeal.⁶

B. Material Facts⁷

In addition to M, Mr. H has three older children. He has a son, N, who is over age 18. He has a daughter, V, who lives with her mother, and a son, A, who lives with Mr. H. He does not pay child support for V or receive support for A. A will turn 18 in June of 2012.

Mr. H works as an independent contractor selling cable television and cellular telephone services for No Name.⁸ He estimated that he earned between \$10,000 and \$14,000 from that business per year net of expenses. Mr. H also has an No Name business, but he estimates only earning about \$1,500 from that business last year. He owns rental property in New Mexico from which he receives \$700 per month before expenses.

In the past, Mr. H worked as an employed salesperson for No Name. He earned substantially more as an employee than he is earning now. He left that job in 2004 to work in New Mexico for Comcast. He has since returned to Alaska.

The superior court has recently entered an order requiring Mr. H to pay child support for both A and V, and the amount of support is based on a substantially higher income than the amount of income discussed below. Mr. H testified that the reason the court imputed income to him is that he failed to timely submit his tax returns to the court. The Superior Court order and the precise amount of the child support award are not in evidence.

III. Discussion

A. Mr. H's Income

CSSD did not have actual income information for Mr. H, so it calculated his support obligation on the assumption that Mr. H could earn \$38.10 per hour as a computer technician.⁹ This was based on CSSD's review of business license records.¹⁰ Those business licenses are not

⁵ Exhibit 9.

⁶ *Id.*

⁷ Unless otherwise indicated, the factual findings are based on Mr. H's testimony.

⁸ He operates this business through No Name Communications, LLC.

⁹ Exhibit 5, page 4.

¹⁰ *Id.*

in evidence, and there is no indication in the record that Mr. H is or has ever been a computer technician.¹¹

After CSSD's original determination, Mr. H provided tax returns for 2008 – 2010. These tax returns include Schedule C statements for No Name Communications and his No Name business. The returns also include a Schedule E, showing his rental property income.

CSSD argues that these returns and Mr. H's testimony are not reliable indicators of his actual income because Mr. H earned substantially more in prior years. Mr. H testified that the telecommunications industry has changed since the years when his income was higher. There is no evidence in the record to suggest that cable and cellular phone sales personnel typically earn more than Mr. H.

CSSD also argued that Mr. H must be earning more money than he is reporting on his tax returns because he testified to expenses that are substantially more than his reported annual income, yet he has minimal debt. Mr. H testified that some of the expenses he listed in his testimony are paid for by his business. In addition, he testified that his mother has been providing him with substantial loans over the last few years.

Given the available information, the three year average of Mr. H's income from his businesses is the best estimate of what Mr. H earned in 2011 and will earn in the future. Mr. H's support obligation should be calculated based on his tax returns.

When self-employment income is used to calculate child support, the total gross receipts of the business are considered income, but a deduction is allowed for ordinary and necessary expenses.¹² Ordinary and necessary expenses do not include accelerated depreciation or any "other business expense determined by the agency to be inappropriate."¹³ In kind payments, use of a company car, and reimbursed meals are counted as income if the amount is significant and reduces living expenses.¹⁴

¹¹ The hourly wage for a computer technician was derived from Alaska Occupational Employment Statistics, but that data is also not in the record.

¹² 15 AAC 125.030(c); Civil Rule of Procedure 90.3, Commentary III.B.

¹³ *Id.*

¹⁴ *Id.* See also 15 AAC 125.030(a)(19) (income includes perquisites "or in-kind compensation, such as employer provided housing and transportation benefits, to the extent that they are significant and reduce living expenses.")

Mr. H's rental property has been operating at a loss and, therefore, no income will be included from that business.¹⁵ For his other businesses, Mr. H's operating expenses include deductions for use of his car, travel, and meals and entertainment. He testified that the business also pays for his cable and internet service, though those amounts do not appear to be separately listed on his tax returns. The automobile deduction appears to be based on a per mile amount for business travel without miles traveled for personal use.¹⁶ This provides some personal benefit to Mr. H because the reimbursement rate includes money to help pay for maintenance and other operating expenses. Based on his tax returns, a majority of his driving was for No Name Communications. That deduction is allowed, but to adjust for the personal benefit provided by that deduction, no deduction will be allowed for the car expense associated with the No Name business.

Mr. H has also claimed large deductions for travel, meals, and entertainment.¹⁷ These expenses reduce at least to some degree Mr. H's living expenses. In addition, the amount claimed is large in comparison to his total income.¹⁸ For purposes of calculating child support in this case, those expenses are deemed inappropriate.¹⁹ Based on Mr. H's tax returns, his business income from the last three years is shown in the following chart:

Year	No Name Communications	No Name	Total
2008	21,554	229	21,783
2009	21,957	1,118	23,075
2010	15,943	913	16,856

Based on these annual amounts, Mr. H's income has averaged \$20,571.33 per year. An additional \$100 per month is added for the business provided cable and internet. With this addition, his annual income is \$21,771.33 per year.

¹⁵ The loss is not used to offset other income. 15 AAC 125.030(c).

¹⁶ See, e.g., Exhibit 9, page 7.

¹⁷ This is in addition to a large amount claimed for professional publications and attending conferences.

¹⁸ He claimed travel, meals, and entertainment deductions that were more than 10% of his gross revenues for No Name Communications.

¹⁹ 15 AAC 125.030(c). No determination is made as to whether similar deductions would be inappropriate under different factual circumstances.

B. Child Support Calculation

In calculating the support owed for M, Mr. H is entitled to a credit for A, a child of a prior relationship living in the home.²⁰ Although he apparently is obligated to pay support for V as well, he is not entitled to a credit for that obligation because he is not actually paying for her support. Using CSSD's online child support calculator, Mr. H is entitled to a credit of \$352 per month for supporting A.²¹ When this credit is included in the calculation, Mr. H's support obligation for M is \$282 per month.²² Once A turns 18, Mr. H's support obligation for M will be \$352 per month.²³

Ms. D's proposal for action noted that she was concerned that she had not received child support for M since his birth. Ms. D did not request child support services until March of 2011. When the custodial parent initiates a child support action, the support order may not become effective prior to the month in which services were requested.²⁴ Although Mr. H has a continuing legal obligation to support M, CSSD is not able to enforce that obligation for any time prior to Ms. D's application for services. Recovery of any support for earlier years would have to be accomplished through a civil court.

IV. Conclusion

Mr. H's tax returns are the best available information for estimating his 2011 and future income. Based on his average income for the past three years, his child support obligation should be set at \$282 per month for one child until his older son A turns 18. At that time, Mr. H's obligation should be set at \$352 per month for one child.

V. Child Support Order

- Mr. H's child support obligation is set at \$266 per month for one child effective March 1, 2011;
- Mr. H's child support obligation is set at \$352 per month for one child effective July 1, 2012;
- All other provisions of the August 26, 2011 Administrative Child Support and Medical Support order remain in effect.

²⁰ Civil Rule 90.3(a)(1)(D).

²¹ Attachment A.

²² Attachment B.

²³ Attachment C.

²⁴ 15 AAC 125.105(a)(2).

DATED this 24th day of April, 2012.

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 7th day of May, 2012.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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