

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

IN THE MATTER OF:)	
)	OAH No. 12-0097-CSS
E V. H)	CSSD No. 001175925
_____)	

DECISION AND ORDER

I. Introduction

This case involves the obligor E V. H's appeal of an Amended Administrative Child and Medical Support Order that the Child Support Services Division (CSSD) issued on March 14, 2012. The obligee child is R, Jr., age 5. The custodial parent is R R. H.

The formal hearing was held on May 7, 2012. Ms. H could not be reached before the hearing and did not participate.¹ Mr. H appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. H's child support is set at \$124 per month, effective April 2011, and ongoing.

II. Facts

A. Procedural History

Mr. H applied for child support services in April 2011.² CSSD initiated the process of establishing Ms. H's child support obligation by requesting financial information from her on May 24, 2011, and issuing an administrative child support order on January 17, 2012.³ Ms. H requested an administrative review.⁴ After the review, CSSD issued an Amended Administrative Child Support and Medical Support Order on March 14, 2012 that set Ms. H's ongoing child support at \$781 per month, with arrears of \$1,353 from April 2011 through March

¹ Ms. H signed for the notice of the date and time for the hearing on April 30, 2012. The undersigned called three telephone numbers that were provided with the case referral from CSSD. Ms. H could not be reached for the hearing, nor did she respond to a voicemail message left for her to call the OAH.

² Exh. 1.

³ Pre-hearing brief at pg. 1; Exh. 7.

⁴ Exhs. 8-11.

2012.⁵ Ms. H appealed on April 4, 2012.⁶ Prior to the hearing, CSSD submitted an extract of her income from the Alaska Department of Labor.⁷

B. Material Facts

Ms. H and Mr. H are the parents of R, Jr., 5, who is in the court-ordered custody of Mr. H as of February 26, 2011.⁸ He applied for child support on April 25, 2011.⁹

CSSD's representative stated at the hearing that Ms. H was incarcerated from January 20, 2011 through March 26, 2012. He added that he had spoken with Ms. H a few days prior to the hearing and she indicated she was not working. Mr. H contested that information, claiming that Ms. H had told him when she returned to her home that she would be working part-time on an archiving project that involved her grandfather. CSSD's information appears to be more recent than Mr. H's.

CSSD also stated during the hearing that in addition to Ms. H's 2011 wages of \$1,635.79, she received Native corporation dividends in the amount of \$4,728.12. Her income that year totaled \$7,537.91.¹⁰ A child support amount calculated from that total income equals \$124 per month for one child.¹¹ CSSD calculated her 2012 and ongoing child support at \$781 per month, based on full-time income of \$53,809.60, which was derived from an hourly wage of \$25.87.¹² Ms. H's appeal acknowledged she earned \$25.87 per hour at one time in the past, but that was more likely than not either a part-time wage or she received it prior to 2009. The extract CSSD submitted indicates her 2009 earnings were \$10,801.99, plus UIB of \$6,749; and that in 2010 she earned \$27,320.86, plus UIB of \$397.¹³ No evidence in the record indicates Ms. H has ever earned income close to \$50,000 in one year.

III. Discussion

⁵ Exh. 3.
⁶ Exh. 12.
⁷ Exh. 13.
⁸ Exh. 2.
⁹ Exh. 1.
¹⁰ See Exh. 11 at pg. 8.
¹¹ *Id.*
¹² See Exh. 11 at pg. 10.
¹³ Exh. 13 at pgs. 1-2.

Ms. H filed an appeal and requested a formal hearing, but she did not participate in the hearing. Otherwise, she provided limited evidence consisting only of her appeal statement and a child support guidelines affidavit on June 7, 2011, while she was still incarcerated.¹⁴ Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear. The person who filed the appeal, in this case, Ms. H, has the burden of proving by a preponderance of the evidence that CSSD's amended order is incorrect.¹⁵

A parent is obligated both by statute and at common law to support his or her children.¹⁶ 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.¹⁷ Mr. H applied for child support services in April 2011, so CSSD is charging Ms. H with support as of May 1, 2011. That is the month Ms. H's obligation to support her child through CSSD should begin.¹⁸

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." CSSD correctly calculated Ms. H's child support at \$124 per month for 2011, and that figure should also apply to her 2012 and ongoing obligation. CSSD's determination that Ms. H is currently earning over \$50,000 annually is not supported by the evidence, and the child support calculation of \$781 per month that is derived from that income figure should not be adopted.

IV. Conclusion

Ms. H met her burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child and Medical Support Order was incorrect. Her child support obligation under Civil Rule 90.3 is correctly calculated at \$124 per month, without variance, and should be adopted. The obligation should begin as of May 1, 2011, the first of the month after Mr. H applied for services.

V. Child Support Order

¹⁴ Exh. 4.

¹⁵ 15 AAC 05.030(h).

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁷ 15 AAC 125.105(a)(1)-(2).

¹⁸ *See* Exh. 4 at pg. 8.

- Ms. H is liable for child support for R, Jr. in the amount of \$124 per month, effective May 1, 2011, and ongoing;
- All other provisions of the Amended Administrative Child Support and Medical Support Order dated March 14, 2012 remain in full force and effect.

DATED this 6th day of June, 2012.

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 25th day of June, 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.]