

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

In the Matter of:	)	
	)	OAH No. 12-0134-CSS
D A. H	)	CSSD No. 001179949
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This is a child support establishment case. The obligor is D H. The custodian of record is T X, and the child in this matter is F L.

Prior to the hearing, the Child Support Services Division (CSSD) was asked to address whether a notice and finding of financial responsibility had been served on Mr. H, and if not, what effect that would have on the hearing. CSSD responded that its administrative support order served as the notice and finding of financial responsibility.

A hearing was held on June 18, 2012. Mr. H appeared in person and Ms. X appeared by telephone. CSSD was represented by Child Support Specialist Erinn Brian. The record was held open to allow Mr. H time to submit additional payroll information, and to give CSSD an opportunity to provide new calculations based on that information. CSSD was also asked to address in more detail the question whether the administrative order complied with the requirements of AS 27.25.160. Mr. H submitted additional records, and CSSD prepared new child support calculations.

Because CSSD has not properly complied with AS 25.27.160, the administrative support order is vacated.

**II. Facts**

*A. Background*

Ms. X applied for child support services in October of 2011.<sup>1</sup> An order to provide financial information was sent to both parties on November 9, 2011.<sup>2</sup> CSSD issued an Administrative Child Support and Medical Support Order on January 27, 2012.<sup>3</sup> Ms. X

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 6.

requested an administrative review of that order.<sup>4</sup> An Amended Administrative Child and Medical Support Order was issued on May 1, 2012, setting Mr. H's support obligation at \$921 per month.<sup>5</sup> Mr. H appealed, stating that he earned less than the amount used by CSSD in calculating the child support obligation.<sup>6</sup>

*B. Material Facts*

In 2011, Mr. H was a civilian aircraft mechanic with the Alaska Air National Guard. He was also a member of the National Guard. Accordingly, he received pay both as a civilian and as a member of the military when on National Guard training. On April 5, 2012, his status changed to Active Guard Reserve. From that date forward, he only received military pay, and not civilian pay.

During 2011, Mr. H earned \$28,962 in wages.<sup>7</sup> He also received a Subsistence Allowance, Housing Allowance, and COLA totaling \$1,032.91 for his National Guard duty.

In 2012, he received \$2,372 every two weeks in civilian pay for the first three months of the year.<sup>8</sup> There were 13 weeks in the time period beginning January 1, 2012 and ending March 31, 2012. Mr. H's total earnings for those three months was \$15,418.<sup>9</sup>

Beginning in April of 2012, he began receiving \$2,845.20 per month in base pay as an active duty National Guard member. He also began receiving Subsistence Allowance, Housing Allowance, and COLA totaling \$2,398.17 per month. Thus, for the eight month period beginning in April of 2012 through December of 2012, Mr. H's total wages are expected to be \$22,761.60,<sup>10</sup> and his total allowances and COLA will be \$19,185.36.<sup>11</sup>

**III. Discussion**

*A. Applicable Law*

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on

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<sup>4</sup> Exhibit 7.

<sup>5</sup> Exhibit 8, page 3.

<sup>6</sup> Exhibit 9.

<sup>7</sup> Exhibit 9, page 2.

<sup>8</sup> See Exhibit 15, page 6 (Civilian Leave and Earnings Statement).

<sup>9</sup> \$2,372 divided by 2 = \$1,186 per week. \$1,186 times 13 weeks = \$15,418.

<sup>10</sup> \$2,845.20 times 8 = \$22,761.60.

<sup>11</sup> \$2,398.17 times 8 = \$19,185.36.

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

his or her “total income from all sources.” The person appealing CSSD’s decision has the burden of demonstrating that the decision is incorrect.<sup>13</sup>

When establishing a child support obligation, arrears begin on the date the custodial parent applied for services.<sup>14</sup> Ms. X signed her application on October 15, 2011.<sup>15</sup> CSSD’s date stamp shows receipt on October 33,<sup>16</sup> which is not an actual date. Thus, her signature date is the best evidence of when Ms. X actually applied for services, and when the arrears would begin to accrue.

**B. Child Support Calculation**

Child support awards are based on annual income.<sup>17</sup> Using Mr. H’s annual income for 2011 and inserting that information into CSSD’s online support calculator, his child support obligation for 2011 would be \$474 per month for one child.<sup>18</sup>

For 2012, Mr. H’s annual income is the \$15,418 from the first three months of the year plus \$22,761.60 for the next eight months and his COLA and housing and subsistence allowances. Adding these figures yields total wages for the year of \$38,179.60,<sup>19</sup> plus allowances and COLA of \$19,185.36. Inserting these numbers into CSSD’s online support calculator results in a child support obligation of \$868 per month for one child.<sup>20</sup>

**C. Hardship Request**

CSSD has been garnishing Mr. H’s pay for both his monthly child support and for arrears that accrued prior to the issuance of the Administrative Support Order. He has requested that the amount of withholding be reduced because it has created a financial hardship.

There are two ways in which hardship relief can be granted. First, CSSD can reduce the income withholding pursuant to 15 AAC 125.550. This does not reduce an obligor’s child support payment, but does lower how much is being withheld each month to pay arrears. Mr. H

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<sup>13</sup> 15 AAC 05.030(h).

<sup>14</sup> 15 AAC 125.105(a)(2).

<sup>15</sup> Exhibit 1, page 3.

<sup>16</sup> Exhibit 1, page 1.

<sup>17</sup> 15 AAC 125.030(a); 15 AAC 125.070(a).

<sup>18</sup> Attachment A. Because Mr. H’s tax return was used to calculate his income, his actual taxes from the tax return were used in the calculation.

<sup>19</sup> \$15,418 + \$22,761.60 = \$38,179.60.

<sup>20</sup> Attachment B.

has submitted a completed form for this type of hardship request to CSSD, and the agency should consider whether he meets the applicable guidelines for granting his request.<sup>21</sup>

The second type of hardship relief actually reduces the monthly child support obligation. The administrative law judge may adjust the amount of child support calculated pursuant to the support guidelines in Civil Rule 90.3(a) “for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied.”<sup>22</sup> According to the documents submitted by Mr. H after the hearing, his monthly expenses are between \$5,000 and \$5,300 per month. His current income, including allowances, is \$5,243 per month. Mr. H’s expenses do not appear to be extravagant, but there may be areas where he can reduce them somewhat. For example, he may be able to sell his timeshare unit and eliminate that monthly payment, and he could eliminate the monthly cost of cable TV. Supporting his child will certainly put a strain on Mr. H’s finances. However, without more evidence it cannot be said that he has proven by “clear and convincing evidence”<sup>23</sup> that setting his child support obligation at the amount calculated pursuant to the Civil Rule 90.3(a) guidelines creates an obvious injustice.

#### D. Arrears and Ongoing Child Support Obligation

Ms. X requested child support services, which would normally entail setting the monthly child support obligation and issuing an order for ongoing child support in that amount. In this case, however, an order providing for arrears and ongoing support cannot yet be issued.

The process of establishing a support order begins with a request for financial information from both parents.<sup>24</sup> Upon receipt of that information, or after the time period for a response has expired, CSSD may initiate a child support action by serving the non-custodial parent with a notice and finding of financial responsibility.<sup>25</sup> A notice and finding of financial

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<sup>21</sup> Mr. H needs to work directly with CSSD on this issue. This appeal only concerns setting the proper child support obligation, and not the amount to be withheld from his income to pay that obligation.

<sup>22</sup> Civil Rule 90.3(c)(1).

<sup>23</sup> Clear and convincing is a higher standard of proof than the preponderance of the evidence standard. The preponderance standard is met if something is the slightest amount more likely. Clear and convincing requires proof that something is highly probable instead of just slightly more likely.

<sup>24</sup> 15 AAC 125.100(a).

<sup>25</sup> AS 25.27.160; 15 AAC 125.100(b).

responsibility establishes an ongoing support obligation.<sup>26</sup> It also establishes any arrears for the time period prior to the effective date of the notice and finding of financial responsibility.<sup>27</sup>

CSSD has asserted that its Administrative Child Support and Medical Support Order<sup>28</sup> serves as the notice and finding of financial responsibility required by AS 25.27.160.<sup>29</sup> That order contains text that specifically states it is intended to serve as the notice and finding of financial responsibility.<sup>30</sup> If the administrative order meets the requirements of AS 25.27.160, then it is sufficient regardless of the title used on that order. In this case, the administrative order does not meet all of the statutory requirements. That statute provides:

- (b) Except as provided in (c) of this section, the notice and finding of financial responsibility served under (a) of this section must state
  - (1) the sum or periodic payments for which the alleged obligor is found to be responsible under this chapter;
  - (2) the name of the alleged obligee and the obligee's custodian;
  - (3) that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because
    - (A) no duty of support is owed; or
    - (B) the amount of support found to be owed is incorrect;
  - (4) that, if the person served with the notice and finding of financial responsibility does not request a hearing within 30 days, the property and income of the person will be subject to execution under AS 25.27.062 and 25-27.230 – 25.27.270 in the amounts stated in the finding without further notice or hearing.<sup>[31]</sup>

The administrative order issued in this case does not meet the third and fourth requirements.

The administrative order says that the obligor may request an “administrative review” of the finding.<sup>32</sup> An administrative review is not a hearing. A hearing allows the obligor to attend personally and explain the basis for his or her dispute. It also allows for additional witnesses to be called and questioned. The legislature specifically provided that the notice and finding of

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<sup>26</sup> 15 AAC 125.100(c).

<sup>27</sup> 15 AAC 125.105(a).

<sup>28</sup> Exhibit 6.

<sup>29</sup> CSSD's Notice regarding Service of a Notice and Finding of Financial Responsibility dated June 15, 2012.

<sup>30</sup> Exhibit 6, page 6.

<sup>31</sup> AS 25.27.160(b). Subsection (c) provides for different requirements when CSSD is establishing only a duty of medical support.

<sup>32</sup> Exhibit 6, page 1. See 15 AAC 125.118 (providing for administrative review). This regulation and the order say that an administrative review may only be requested in writing sent by certified mail, return receipt. Whether that is proper under AS 25.27.160(b)(3) is not decided in this decision.

financial responsibility must advise the obligor that he or she may request a *hearing*. Exhibit 6 does not meet that requirement.

The administrative order also states “**Property and income are subject to withholding by CSSD without further action or hearing** (Alaska Statute 25.27.160(b)(4) and Alaska Statute 25.27.230-270.”<sup>33</sup> This is an incorrect statement of law. AS 25.27.160(b)(4) says that the obligor must be told that his or her property and income is subject to withholding if a hearing is not requested within 30 days. The notice actually given in Exhibit 6 says that withholding can begin “without further action or hearing”, which logically means even if a hearing is requested. CSSD is not permitted to withhold income or property after issuance of a notice and finding of financial responsibility if the obligor timely requests a hearing, and the administrative order issued in this case not only failed to provide that information, as required by AS 25.27.160, but incorrectly informed Mr. H that a hearing request would not delay withholding.<sup>34</sup>

#### **IV. Conclusion**

Because CSSD has not yet served a notice and finding of financial responsibility that complies with AS 25.27.160, Mr. H’s arrears and ongoing child support obligation cannot yet be established. Once the proper notice is sent, arrears can be established as of the date Ms. X applied for services. Thus, any amounts already collected from Mr. H should be credited to him for purposes of calculating those arrears. In addition, CSSD should allow Mr. H to voluntarily pay child support in the amount calculated above to avoid accruing additional arrears. Once the notice and finding of financial responsibility is served, both Mr. H and Ms. X will have an opportunity to request a hearing if either disagrees with CSSD’s calculation.

#### **V. Child Support Order**

- The Amended Administrative Child and Medical Support Order issued on May 1, 2012, and the Administrative Child Support and Medical Support Order issued on January 27, 2012, are both hereby VACATED.

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<sup>33</sup> Exhibit 6, page 5 (emphasis in original).

<sup>34</sup> The amended order issued after the administrative review held in this matter (Exhibit 8) also does not comply with AS 25.27.150(b).

- Pursuant to AS 25.27.150, CSSD may begin an action to establish a duty of support by serving on Mr. H a notice and finding of financial responsibility.

DATED this 9<sup>th</sup> day of July, 2012.

*Signed* \_\_\_\_\_  
Jeffrey A. Friedman  
Administrative Law Judge

### **Non-Adoption Options**

2. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

Child support is ordered to be \$474 per month for 2011, beginning November 1, 2011. Child support is ordered to be \$868 per month for 2012 and ongoing, beginning January 1, 2012.

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 20<sup>th</sup> day of August, 2012.

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

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