

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

IN THE MATTER OF:)	
)	OAH No. 12-0458-CSS
K S. X)	CSSD No. 001177283
_____)	

DECISION AND ORDER

I. Introduction

This case involves the obligor K S. X's appeal of an Administrative Review Decision that the Child Support Services Division (CSSD) issued on August 23, 2012. The child in this case is T, 4. The custodial parent is F S. V.

The formal hearing was held on October 15, 2012. Mr. X did not participate.¹ Ms. V appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. X's child support is set at \$83 per month, from July 2011 through November 2012, and ongoing.

II. Facts

A. Procedural History

Ms. V applied for child support services in her state of residence and the request was transmitted to CSSD in July 2011.² CSSD initiated the process of establishing Mr. X's child support obligation by requesting financial information from him on August 22, 2011. CSSD then issued an administrative child support order on November 22, 2011 that set Mr. X's ongoing child support at \$258 per month, effective December 2011, with arrears totaling \$250 from July 2011 through November 2011.³ He requested an administrative review.⁴ On August 23, 2012, CSSD issued an Administrative Review Decision that affirmed its earlier support

¹ Two telephone calls were made to the obligor prior to the hearing. The call placed to his residence of record was answered, but the adult male who took the call stated Mr. X was not at home and provided a cellular number for Mr. X. The second call was placed to that number, but it went unanswered and a message was left for Mr. X to call the Office of Administrative Hearings (OAH). Mr. X has not returned the call.

² Exh. 1.

³ Exhs. 2-4.

⁴ Exh. 5.

order.⁵ Mr. X appealed on September 17, 2012, asserting he has not worked for years, primarily because he cannot read and write as well as others.⁶

B. Material Facts

The obligee T lives out of state with the custodial parent, F S. V. CSSD received Ms. V's application for child support from her state of residence on July 21, 2011.

Little is known of Mr. X's circumstances, primarily because he did not appear at the hearing. Ms. V stated he tried to call her about two weeks prior to the hearing, and although they did not talk, she believed he knew about the hearing. Ms. V further testified she thought he was working at a No Name and being paid under the table, but she did not know any other details. She also stated that Mr. X lives with his mother.

Mr. X has a limited work history. According to the Alaska Department of Labor and Workforce Development (DOL), he last worked for reported wages in 2009 for No Name, LLC, a No Name. CSSD's research indicated No Name filed an administrative dissolution to the Division of Corporations, Business and Professional Licensing in 2007,⁷ so it is possible the business began operating again after the dissolution. In any event, the DOL reports that Mr. X's employers reported wages and unemployment benefits (UIB) paid to him in the following amounts:

2009	\$2,461.60	wages
2008	\$8,362.68	wages
2007	\$2,056.48	wages
2006	\$2,318.00	UIB only
2005	\$6,739.25	wages ⁸
Total	\$21,938.01	

Dividing the total figure from this list by five yields an average income figure of \$4,387.60 per year. A child support amount calculated from that figure is \$83 per month.⁹

III. Discussion

Mr. X filed an appeal and requested a formal hearing, but he did not participate in the hearing. Otherwise, he provided limited evidence consisting of his appeal statement and a short IRS transcript that confirms some of the wage information that his employers reported to the

⁵ Exh. 7.
⁶ Exh. 4.
⁷ Exh. 11.
⁸ Exh. 10.
⁹ Attachment A.

DOL over the years. 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, Mr. X, has the burden of proving by a preponderance of the evidence that CSSD's support order is incorrect.¹⁰

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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.¹² Ms. V's request for child support was received by CSSD in July 2011, so that is the month Mr. X's obligation to support T through CSSD should begin.¹³

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." In its administrative order, CSSD calculated Mr. X's child support obligation at \$258 per month.¹⁴ Apparently because the DOL does not have current earnings figures for him, CSSD calculated that support amount from income generated from the minimum wage of \$7.75 per hour being earned on a full-time basis (40 hrs x 52 weeks = 2,080 hours).¹⁵ That estimate yields an annual income figure of \$16,120 per year.¹⁶

The income figure CSSD used is significantly higher than the actual wages Mr. X's employers reported to the DOL in prior years. There is no evidence in the record to suggest that Mr. X has a history of earning the higher annual income CSSD used, or that he is even capable of earning that amount. Ms. V testified that she believes Mr. X has worked "under the table," but the No Name where she thought that was happening is actually an employer that reported Mr. X's wages to the DOL. Obviously, Mr. X has had consistently low income figures, but his statement that he cannot read or write as well as other people is a reasonable explanation for his low wages.

Civil Rule 90.3 allows the administrative law judge to average an obligor parent's income if, historically, the income has been "erratic" in the past.¹⁷ Using an average income figure is the best method of calculating Mr. X's child support obligation. From 2005 through 2009, his

¹⁰ 15 AAC 05.030(h).

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² 15 AAC 125.105(a)(1)-(2).

¹³ See Exh. 1.

¹⁴ Exh. 4 at pg. 7.

¹⁵ Exh. 4 at pg. 4.

¹⁶ Exh. 4 at pg. 7.

¹⁷ Civil Rule 90.3, Commentary III.E.

income ranged from about \$2,000 to just over \$8,000.¹⁸ To have that variation in income from one year to the next is a good example of “erratic” income. Thus, the average of Mr. X’s earnings for the years reported – \$4,387.60 – should be used for the child support calculation. As shown in the attachment that accompanies this decision, that income figure yields a child support calculation of \$83 per month. This is much lower than the figure determined by CSSD, but the average income used here is a more reliable indicator of Mr. X’s annual income than the earnings generated by using the minimum wage. The income CSSD used is twice as much as the highest annual income figure reported to the DOL for Mr. X. Thus, the average figure taken from his actual wages is more likely than not a better indicator of Mr. X’s ability to pay support.

IV. Conclusion

Mr. X met his burden of proving by a preponderance of the evidence that CSSD’s Administrative Review Decision was incorrect. His average income from the years 2005 through 2009 yields a child support amount of \$83 per month, which should be adopted. This figure is a better indicator of Mr. X’s ability to pay support than the \$258 per month figure generated using the minimum wage. There was no variance under Civil Rule 90.3(c) requested or granted.

V. Child Support Order

- Mr. X is liable for child support for T in the amount of \$83 per month from July 2011 through November 2012, ongoing;
- All other provisions of the Administrative Review Decision dated August 23, 2012, remain in full force and effect.

DATED this 14th day of November, 2012.

By: Signed _____
Kay L. Howard
Administrative Law Judge

¹⁸ Exh. 10.

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 3rd day of December, 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.]