

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

IN THE MATTER OF)	OAH No. 13-1003-CSS
N M. T-C)	CSSD No. 001179470
)	
_____)	

CHILD SUPPORT DECISION AND ORDER

I. Introduction

This case is N M. T-C’s appeal of the Division’s order establishing her child support obligation for A and B. This order requires Ms. T-C to pay support for the months since October of 2011, when Mr. Z requested the Division’s services.

On August 6, 2013, a formal hearing was held to consider the child support obligation of N M. T-C (Obligor) for the support of her children, A and B (Obligees).¹ Ms. T-C participated. The custodial parent, Y E. Z did not participate.² Russell L. Crisp, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was recorded. The record closed on August 6, 2013.

Having reviewed the record in this case and after due deliberation, I concluded that Ms. T-C’s monthly child support through 2012 should remain the same as set out in the Division’s order, that is, \$383 per month from October through December of 2011, and \$134 per month for all of 2012, but I conclude that her monthly child support for 2013 and ongoing child support should be set at the minimum of \$50 per month, based on her actual income.

II. Facts

A. History

The children, A and B, have been in Mr. Z’s custody since before October of 2011, when Mr. Z requested the Division’s services. The Division is seeking ongoing child support and arrears going back to that month.³

The Division served Ms. T-C with an Administrative Child and Medical Support Order

¹ The hearing was held under Alaska Statute 25.27.170.

² Mr. Z did not provide a phone number to contact him for the hearing as instructed on the notice sent to him. There was no answer at his phone number of record when he was called for the hearing and there was no response to the message left at that number.

³ Exhibits 1 & 6

on June 18, 2012.⁴ Ms. T-C requested an administrative review.⁵ Ms. T-C provided her 2011 tax return and other income documentation.⁶

The Division issued an Amended Administrative Child and Medical Support Order on August 28, 2012.⁷ The Division set Ms. T-C's arrears for October through December of 2011 at \$383 per month based on her 2011 income,⁸ and \$134 per month for 2012, and her ongoing child support obligation, based on her 2012 income less public assistance, which included unemployment benefits plus a PFD.⁹

Ms. T-C attempted to request a formal hearing, but through a series of miscommunications, those requests were processed as requests for modification actions, until the Division agreed to allow her to have a formal hearing on the Amended Administrative Child and Medical Support Order.¹⁰

Prior to the hearing, Ms. T-C provided documentation of her son Q's special medical needs which require her to stay at home and provide for his care. Q was born in April of 2011. He has respiratory problems, including asthma, which are aggravated by the exposure to other illnesses at daycare. Ms. T-C provided a letter from Q's physician explaining Q's medical problems and the reasons Q needs to stay at home. Q's physician recommends Q stay at home in his mother's care until he is less likely to catch hand-to-mouth transfer viruses from other children, when he is three to four years old.¹¹

At the hearing, Ms. T-C agreed that the calculations the Division had used to set her monthly child support obligation for A and B for 2011 and 2012 were based on the correct income information. Ms. T-C agreed with the monthly amounts set for those years. Ms. T-C was concerned about the monthly amounts set for 2013 and ongoing. Ms. T-C is currently unemployed and is receiving public assistance. Her income in 2013 is limited to these benefits plus a PFD.¹² Ms. T-C does not anticipate being able to return to work until Q is able to go back

⁴ Exhibit 2.

⁵ Exhibit 4.

⁶ Exhibit 5.

⁷ Exhibit 6.

⁸ Exhibit 6, page 8.

⁹ Exhibit 6, page 9.

¹⁰ Exhibits 7-15 & Recording of Hearing.

¹¹ Exhibit 15, pages 2 & 3.

¹² Exhibits 15 & Recording of Hearing.

to daycare.¹³

After the hearing, the Division provided new calculations for 2013. These calculations result in a monthly child support amount that is less than the minimum \$50 amount required by Alaska law. These calculations therefore set the 2013 monthly amount for A and B at \$50.¹⁴

B. Findings

Based on the evidence in the record, I conclude that it is more likely than not that:

1. The Division correctly calculated Ms. T-C's 2011 and 2012 arrears in the Amended Administrative Child and Medical Support Order and set her monthly support at \$383 per month from October through December of 2011, and \$134 per month for all of 2012.¹⁵
2. The Division's latest calculations for 2013 correctly estimate monthly support at the minimum of \$50 per month based on her actual income.¹⁶
3. Ms. T-C was unable to work in 2013 and will continue to be unable to work due to her youngest child, Q's, medical needs.¹⁷

III. Discussion

Child support should be calculated based on Ms. T-C's actual income unless good cause exists to raise child support above or reduce it below the amount calculated using the income formula in Civil Rule 90.3(a). To establish good cause, the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹⁸ Public assistance benefits are not included as income when calculating child support.¹⁹

Income can be imputed to a parent who has a child support obligation in cases of unreasonable voluntary underemployment.²⁰ Ms. T-C's unemployment is not unreasonable, because she must stay home with Q. Ms. T-C has already justified her unemployment to stay home in order to continue to receive public assistance.²¹

In the child support order on appeal, the Division correctly set Ms. T-C's monthly child

¹³ Recording of Hearing- Testimony of Ms. T-C.

¹⁴ Exhibit 17.

¹⁵ Exhibit 6, pages 8& 9.

¹⁶ Exhibit 17.

¹⁷ Exhibits 15 & Recording of Hearing.

¹⁸ Alaska Civil Rule 90.3(c).

¹⁹ Alaska Civil Rule 90.3 Commentary IIIA.

²⁰ Alaska Civil Rule 90.3(a)(4).

²¹ Exhibits 15, page 2 & Recording of Hearing.

support obligation for 2011 and 2012 based on her actual income for those years in the Amended Administrative Child and Medical Support Order on appeal. That order, however, based Ms. T-C's monthly child support obligation for 2013 and ongoing on her 2012 income rather than her 2013 estimated income. Those monthly amounts therefore need to be adjusted.

As noted above Ms. T-C's 2013 estimated income would result in a monthly child support obligation for two children that would be about \$20, which is less than \$50 per month. The minimum monthly child support amount allowed under Alaska Civil Rule 90.3(c)(3) is \$50 per month. Ms. T-C's 2013 and ongoing child support obligation should be set at the minimum of \$50 per month because her lack of income.²²

IV. Conclusion

Ms. T-C's 2013 child support arrears and her ongoing support should be set at the minimum of \$50 per month.

The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Ms. T-C's ongoing child support for A and B is set in the monthly amount of \$50 effective September 1, 2013.
2. Ms. T-C is liable for child support arrears for A and B in the monthly amounts of \$383 from October through December of 2011; \$134 per month for all of 2012; and \$50 for the months of January through August 2013.
3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for A and B.
4. All other provisions of the Administrative Review Decision and the Amended Administrative Child and Medical Support Order dated August 28, 2012 remain in effect.

DATED this 13th day of August, 2013.

By: Signed
Mark T. Handley
Administrative Law Judge

²² Alaska Civil Rule 90.3(c)(3).

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 5th day of September, 2013.

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

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