

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

IN THE MATTER OF)	OAH No. 13-1720-CSS
B M. W)	CSSD No. 001114429
_____)	

DECISION AND ORDER

I. Introduction

This case is B M. W' appeal of the Child Support Service Division's (Division's) child support order for his children, O and E.

On December 18, 2013, a formal hearing was held to consider Mr. W's appeal.¹ Mr. W participated in the hearing. The custodial parent, U H did not participate.² Russell L. Crisp, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be adjusted by setting Mr. W's ongoing child support at \$653.39 per month for two children.

II. Facts

Mr. W's child support for his child, E, was previously last set in 2005 at \$391 per month for one child.³ The Division initiated a modification action to add O, because O also began to receive public assistance in July of 2013.⁴ Mr. W's paternity of O, the new child added to the order, is not in dispute.⁵

The Division issued notice of the petition for modification on September 20, 2013.⁶ The Division issued Modified Administrative Child and Medical Support Order on October 29, 2013.

The Division's orders set Mr. W's ongoing child support obligation at \$965 per month, effective October 1, 2013. This monthly amount was calculated using reported earnings for Mr. W.⁷ Additional arrears for O at \$250 per month were also established going back to July of

¹ The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.

² Ms. H did not appear or provide a phone number to call for the hearing as instructed in the notice sent to her. Ms. H did not answer at her phone numbers of record at the time set for the hearing.

³ Exhibit 1 & the Division's Pre-Hearing Brief, page 1.

⁴ Exhibit 4, page 9.

⁵ Exhibit 5& Recording of Hearing.

⁶ Exhibit 4.

⁷ Exhibit 4, page 8.

2013.⁸

Mr. W requested a formal hearing, explaining that he and Ms. H were sharing custody evenly, which was confirmed by Ms. H. Ms. H withdrew from the Division's collection services.⁹

Prior to the hearing, the Division recalculated Mr. W's child support order using a shared custody calculation without any earnings for Ms. H. This calculation resulted in a monthly child support obligation of \$ 682.34.¹⁰

At the hearing, Mr. W explained that Ms. H did have a part-time job as a fitness dance instructor and that they had provided her W-2 for 2012 and a paystub for 2013.¹¹

The Division recalculated Mr. W's child support order using a shared custody calculation that included Ms. H's 2012 actual earnings from her W-2. These calculations result in a two-child monthly modified ongoing child support obligation of \$653.39 for Mr. W.¹²

At the hearing, the Division recalculated Mr. W's child support order using a shared custody calculation that included imputed 2012 minimum wage earnings for Ms. H. These calculations result in a two-child monthly modified ongoing child support obligation of \$467.14 for Mr. W.¹³

Based on the evidence in the record, I find that it is more likely than not that Mr. W's modified ongoing child support should be set at \$653.39 per month for the two children based on the Division's latest 50/50 shared custody calculation at exhibit 10.¹⁴

III. Discussion

Mr. W and Ms. H share custody of their two children equally. When calculating child support, a parent is entitled to a reduction on the monthly obligation if the parent is exercising shared custody. Shared custody exists when a child resides with a parent at least 30, but no more than 70, percent of the overnights.¹⁵ Under the shared custody formula, the annual amount each

⁸ Exhibit 4, page 9.

⁹ Exhibit 5.

¹⁰ Exhibit 9, page 1.

¹¹ Recording of Hearing.

¹² Recording of Hearing & Exhibit 10.

¹³ Recording of Hearing.

¹⁴ Recording of Hearing & Exhibit 5.

¹⁵ Alaska Civil Rule 90.3(f).

parent would pay to the other parent if that parent had sole custody is calculated. That support amount is then multiplied for each parent by the percentage of time the other parent will have physical custody of the child. The parent with the larger amount under this calculation is the obligor parent. The annual award from the obligor parent to the other parent is equal to the difference between the two figures multiplied by 1.5.¹⁶

In a child support hearing, the person who filed the appeal, in this case, Mr. W, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁷ Mr. W showed that his ongoing child support should be set based on a shared custody calculation that includes the income Ms. H earns at her part-time job.

It would not be appropriate to imputed minimum wage income to Ms. H at this time. The parents were living together until recently, and had agreed that Ms. H would work part-time. Child support may be based on the potential income of a person who is voluntarily and unreasonably unemployed or underemployed.¹⁸ A noncustodial parent who voluntarily reduces his or her income does not automatically receive a corresponding reduction in his or her child support obligation.¹⁹

If Ms. H could earn a full-time minimum wage income, but was unreasonably unemployed, it would be appropriate to adjust the shared custody child support calculation to include minimum wage earnings for Ms. H rather than setting Mr. W's child support based on the parents' actual income. It is not appropriate to impute income to Ms. H. Without additional evidence of Ms. H's current earning capacity her actual earnings should be used. There is not enough evidence in the record to support a finding of unreasonable underemployment.

IV. Conclusion

Mr. W's modified ongoing child support should be set at \$653.39 per month for the two children based on the Division's latest 50/50 shared custody calculation at exhibit 10. I conclude that O was correctly added to Mr. W's order for E. This child support amount was calculated using the shared custody formula in Civil Rule 90.3(f).

¹⁶ Alaska Civil Rule 90.3(f).

¹⁷ Alaska Regulation 15 AAC 05.030(h).

¹⁸ Civil Rule 90.3 Commentary, Part III-C.

¹⁹ *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

V. Child Support Order

1. Mr. W’s paternity of O is established.
2. Mr. W owes ongoing child support for O and E in the monthly amount of \$653.39 for two children, effective October 1, 2013.
3. Mr. W liable for additional child support arrears for O in the amount of \$250 per month for the months of July 2013 through September 2013.
4. The Division has stopped collecting ongoing child support based on Ms. H’s withdrawal from services.

All other provisions of the Division’s Modified Child Support and Medical Support Order issued on October 29, 2013 remain in effect.

DATED this 19th day of December, 2013.

By: Signed _____
Mark T. Handley
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 3rd day of January, 2014.

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

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