

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

In the Matter of)	
)	OAH No. 14-0931-CSS
Z W)	Agency No. 001108991
_____)	

DECISION

I. Introduction

The custodial parent, T U, appealed a Modified Administrative Child Support and Medical Support Order issued on April 25, 2014. The obligor is Z W, and the obligee child is E U.

The hearing was held on June 25, 2014.¹ Mr. W was given additional time to submit his tax returns for 2012 and 2013. Ms. U was given an opportunity to request a supplemental hearing if the witness she wished to call became available. She was given until July 16, 2014, to make that request, and no request was received by the Office of Administrative Hearings.

After careful consideration of the evidence, Mr. W's child support obligation for E U is set at \$505 per month effective April 1, 2014.

II. Facts

A. Procedural Background

A Modified Administrative Child Support and Medical Support Order was issued on November 25, 2008, setting Mr. W's child support obligation at \$405 per month.² On March 6, 2014, Ms. U requested a modification of that support order.³ On March 17, 2014, the Child Support Services Division (CSSD) notified Mr. W of the petition for modification.⁴

On April 2, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order setting Mr. W's obligation at \$238 per month. CSSD's calculation was based on the assumption that Mr. W earned the minimum wage of \$7.75 per hour, 52 weeks per year, forty

¹ The hearing was held before Administrative Law Judge Kay L. Howard. She has since retired from state service, and this case has been reassigned to ALJ Jeffrey A. Friedman, who has reviewed the entire record, including the audio recording of the hearing.

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 3. The notice was dated March 14, but mailed three days later.

hours per week.⁵ Ms. U appealed the modified order, asserting that Mr. W owns two taxi cab permits, and earns far more than the income amount indicated in the modified order.⁶

Ms. U appeared at the hearing before ALJ Howard in person. Mr. W appeared by telephone. CSSD was represented by Child Support Specialist Russell Crisp, who also appeared by telephone.

B. Material Facts

It is undisputed that Mr. W owns two taxi cab permits. He leases one of those permits to another individual for \$1500 per month, which equates to \$18,000 each year.⁷ Mr. W uses the other permit himself. He has a night driver who pays him \$75 a day for driving at night.⁸ If there is a night driver 6 days each week, throughout the year, this would generate \$23,400 per year in income. In addition, Mr. W drives the cab himself during the day time. He testified that he typically earned \$100 - \$150 each day when he was in town, implying that he was not driving full time. However, if he worked five days a week, for 50 weeks each year, he would receive approximately \$31,250 each year.⁹

The sum of these three sources of income – his own daily driving, his night driver, and the leased permit – is \$72,650. However, Mr. W's tax returns show that he has business related expenses that need to be accounted for.¹⁰ His operating expenses for 2013 were \$38,990.¹¹ His 2012 tax return shows and expenses of \$38,588.¹² Thus, his business expenses average \$38,789, leaving him with an annual income of \$33,861.

Ms. U asserted that Mr. W earned significantly more than this. Her assertion is based in part on what she learned during her six year relationship with Mr. W. However, that relationship ended several years ago and her information may no longer be accurate. In addition, she reported what she had learned from a driver for a different cab company. This driver told her that drivers would typically earn \$300 each day. That testimony is hearsay, and is not given any weight in reaching this decision. Ms. U also provided a Department of Labor and Workforce Development report on wages in the Anchorage/Matanuska-Susitna area. According to this May

⁵ Exhibit 4, pages 7 and 8.

⁶ Exhibit 5.

⁷ Exhibit 11 page 5.

⁸ W Testimony.

⁹ This is based on an average gross revenue of \$125 per day.

¹⁰ *In re T.Y.O.*, OAH NO. 13-1136-CSS (Commissioner of Revenue 2013), page 3 (ordinary and necessary expenses to produce the income should be deducted from gross income when calculating child support).

¹¹ Exhibit 10, page 5.

¹² Exhibit 9, page 5.

2014 report, the median wage for taxi drivers and chauffeurs is \$12.94 per hour.¹³ \$12.94 per hour equates to an annual income of \$25,880.¹⁴ This is slightly less than the calculation above for Mr. W's income from driving his cab during the day. The larger amount is used in this decision.

III. Discussion

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." Based on the evidence in this case, Mr. W is either earning \$33,861 per year, or he could be earning that much if he worked full time.¹⁵ He is also eligible to receive a Permanent Fund Dividend each year, which was \$1,884 last year. Thus, his total annual income was or could be \$35,745.

Mr. W's tax returns show that he is entitled to additional deductions and exemptions so his total federal income tax liability is quite low. However, he does have to pay social security and Medicare tax at the self-employed rate of 15.3%. After payment of this tax, Mr. W's remaining net income is \$30,276. A non-custodial parent's child support obligation for one child is 20% of his or her total income after allowable deductions.¹⁶ Thus, Mr. W's obligation \$6,055.20 per year, or \$505 per month for one child.

IV. Conclusion

Based on Mr. W's actual or potential income, his child support should be set at \$505 per month for one child, effective April 1, 2014. This child support calculation was made pursuant to the guidelines in Civil Rule 90.3.

V. Order

- Mr. W's ongoing child support order is set at \$505 per month for one child effective April 1, 2014.
- All other provisions of the April 25, 2014, Modified Administrative Child Support and Medical Support Order remain in effect.

Dated this 9th day of July 2015.

Signed

Jeffrey A. Friedman
Administrative Law Judge

¹³ Exhibit 5, page 5.

¹⁴ Assuming forty hours each week for 50 weeks each year.

¹⁵ When a parent is unreasonably voluntarily underemployed, his or her child support may be based on potential income. 15 AAC 125.060; 15 AAC 125.020(b).

¹⁶ Civil Rule 90.3(a)(2); 15 AAC 125.010.

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 24th day of July, 2015.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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