

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

In the Matter of)	OAH No. 14-2392-CSS
)	CSSD No. 001198820
L S)	
_____)	

DECISION AND ORDER

I. Introduction

This case is L S's appeal of the establishment order setting her child support arrears and her ongoing child support obligation for her two older children Q and M, who are living with their father's mother, O A. K, as the result of placement in a Child-In-Need-of-Aid case. The Child Support Services Division (Division) issued the child support order due to Ms. K's request for the Division's services. The Division set Ms. S's ongoing child support obligation at the monthly amount of \$579, based on her earnings in 2013. The Division also established arrears going back to April of 2014 based on those earnings.

Ms. S requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing, which was held on February 13, 2014. Ms. S participated. Ms. K also participated. Joe West, Child Support Services Specialist, represented the 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 ongoing child support order should be upheld, based on her earning capacity, effective March 1, 2015. Arrears prior to that date should be adjusted to \$50 per month based on Ms. S's actual income during her pregnancy and the months following the child's birth. The evidence in the record shows that Ms. S will be unreasonably voluntarily under-employed if she chooses to continue to forgo full-time employment. This evidence also shows that the Division did not overestimate Ms. S earning capacity when calculating her ongoing child support.

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II. Facts

This case is an administrative child support establishment action.¹ In April of 2014, Ms. K applied to the Division to provide child support services for her grandchildren Q and M.² The Division served Ms. S, Q and M's mother, with an Administrative Child and Medical Support Order on September 10, 2014.³ Ms. S asked for an administrative review of her child support order. In her request, Ms. S wrote that she had no income and had been unemployed since August of 2013.⁴

The Division issued an Administrative Review Decision affirming the September 10, 2014 Administrative Child and Medical Support Order on October 14, 2014.⁵ The Division set Ms. S's monthly ongoing child support for G at \$579. The order also established arrears back to December of 2013. This order set Ms. S's 2014 arrears at the monthly amount of \$482 per month. The 2014 arrears and ongoing monthly amount of \$579 were based on different estimates of Ms. S's income and earning capacity using Ms. S's 2013 earnings plus a Permanent Fund Dividend.⁶

Ms. S requested a formal hearing. In that request, Ms. S again explained that she is unemployed and her only income is the PFD.⁷ Prior to the hearing, the Division filed an affidavit showing Ms. S's earnings history for the past several years as reported by her former Alaska employers.⁸

At the hearing, Ms. S did provide information regarding her earning capacity and reasons for her employment status. Ms. S explained she was working full-time at a bank for about \$14 per hour, but she stopped working in the fall of 2014 due to problems she was having as a result of her pregnancy. The father of her youngest child is not the father of Q and M. The father of Ms. S's youngest child is her husband. Ms. S's husband works and spends most of his time on the North Slope, but he pays for all of Ms. S's living expenses. Ms. S explained that she does not need to work because of the money her husband earns. She has not tried to go back to work except for some babysitting for her landlord. Ms. S's youngest child was born in April of 2014,

¹ Alaska Civil Rule 90.3(a) governs child support establishment.

² Division's Pre Hearing Brief, page 1 & Exhibit 1.

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

⁴ Exhibit 4, page 2.

⁵ Exhibit 3.

⁶ Recoding of Hearing & Exhibit 3, pages 8 & 9.

⁷ Ms. S's appeal is found at Exhibit 6.

and she stays home and cares for her infant.⁹

Based on the evidence in the record, I find that the Division's calculations at exhibit 3 are correct and are based on the best available estimates of Ms. S's earning capacity during the relevant time frames. Based on the evidence in the record, I find that it is more likely than not that Ms. S will be voluntarily unreasonably underemployed if she continues to choose to stay out of the work force, despite her obligation to support her older children. The Division's calculations used to set Ms. S's ongoing child support were correct, and the income used in those calculations are based on the best estimates of her earning capacity.¹⁰

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Ms. S, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹¹ Ms. S did not show estimates of her income that the Division used to set her arrears was not correct. Ms. S did not show that the Division's estimate of her earning capacity that was used to calculate her ongoing child support obligation was incorrect. Ms. S did not show that the Division's determination that income should be imputed in calculating her ongoing child support obligation was incorrect.

Ms. S is not the first parent who has decided to stay home to care for a younger child because a spouse is able to support the household without both parents being employed. However, Ms. S has two other children to support who do not currently live in her household.

A noncustodial parent's potential income can be imputed to that parent in cases of unreasonable voluntary underemployment.¹² The Alaska Supreme Court has recognized that an obligor parent should not be locked into a particular job or field, nor prevented from seeking personal or professional advancement.¹³ On the other hand, a noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.¹⁴

⁸ Exhibit 7.

⁹ Recording of Hearing - Testimony of Ms. S.

¹⁰ Exhibit 3 & 7 & Recording of Hearing.

¹¹ Alaska Regulation 15 AAC 05.030(h).

¹² Alaska Civil Rule 90.3(a)(4).

¹³ See *Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

¹⁴ *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

Since Ms. S's difficulty with her pregnancy and the need to care for her newborn child made it reasonable for her to stay home, given her husband's willingness and ability to support her and their child, arrears should be based on Ms. S's actual income. Child support based on Ms. S's actual income results in a minimum, \$50 per month child support order.

Ms. S is free to continue to stay at home, but since there is no longer any reason that she cannot work, that decision should not reduce her ongoing child support obligation. Ms. S's decision to spend all her time at home with her youngest child rather than work to provide support for her older children would make her unreasonably under-employed. Alaska child support law does not require that Ms. S's older children subsidize this choice. The Division correctly set Ms. S's ongoing child support obligation at the monthly amount of \$579 per month.

IV. Conclusion

I conclude that the Division correctly ongoing Ms. S's child support obligation in this case, but her arrears should be set at the minimum based on her actual income. The child support amount in the Division's order was calculated using the primary custody formula in Civil Rule 90.3(a) without variance.

V. Child Support Order

1. Ms. S's ongoing child support for Q and M is set at \$579 per month effective March 1, 2015.
2. Ms. S is liable for child support arrears for Q and M in the monthly amounts of \$50 for the months of April 2014 through December 2014; and \$50 per month for the months of January and February of 2015.
3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for Q and M.
4. All other provisions of the Division's October 14, 2014 Administrative Review Decision, affirming the Division's September 10, 2014 Administrative Child and Medical Support Order, remain in effect.

DATED this 23rd day of February, 2015.

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 25th day of March, 2015.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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