

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

In the Matter of	)	
	)	
H S. J	)	OAH No. 15-0374-CSS
<hr style="width:40%; margin-left:0"/>	)	Agency No. 001150910

**DECISION AND ORDER**

The custodian, K X, appealed an Amended Administrative Child Support and Medical Support Order that CSSD issued on March 6, 2015. This order reduced the obligor, H J's, monthly child support obligation for one child from \$427 to \$286 effective January 1, 2015. The obligee child is K, 11 years old. The hearing was held on May 5, 2015. Mr. J was called at the appointed time, but there was no answer.<sup>1</sup> Ms. X participated by telephone. After the record closed it was discovered that CSSD did not calculate child support using the correct inputs.<sup>2</sup> CSSD's first calculation in this matter was based upon \$17,852.98 in wages subject to FICA. This is the equivalent of \$8.58 per hour.<sup>3</sup> Alaska's minimum wages was recently increased from \$7.75 per hour to \$8.75 per hour.

One possible explanation for the \$8.58 per hour was that CSSD added his Native Dividend to the \$7.75 per hour calculation. If so, then this is incorrect because a Native Dividend is not subject to FICA. Regardless, there was nothing to indicate the amount of Native Dividend, the number of shares, and where that information was found by CSSD.

Therefore, it was concluded that the child support calculated in the March 6, 2015 Modified Administrative Child Support and Medical Support Order was not calculated under Alaska Rule Civil Procedure 90.3 and CSSD was ordered to recalculate using actual income from all sources.

On May 26, 2015, CSSD presented a revised calculation based upon full time minimum

---

<sup>1</sup> A current mailing address must be provided to the department with the request for appeal, and any change in mailing address after the request for appeal is filed must be reported to the department immediately. If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department. 15 AAC 05.010. The notice of hearing sent by first class mail was returned as undeliverable and unable to forward. It was sent to the mailing address contained in CSSD's file. Mr. J did not request the hearing. Under department regulations, the hearing proceeded in his absence.

<sup>2</sup> Exh. 6 at pp. 5, 6.

<sup>3</sup> \$17,852.98/2,080hours = \$8.58 per hour.

wage full time employment (2080 hours x \$8.75) plus the PFD and Mr. J's No Name dividends. The revised calculation resulted in a child support obligation for one child in the amount of \$303 per month.<sup>4</sup>

In the order reopening the record and directing CSSD to provide a revised calculation, the parties were provided a deadline to object or otherwise comment on CSSD's revised calculation. They were informed that if no comment or objection was received they would be considered to have no objection to the amount calculated. However, the undersigned still has an obligation to determine whether the \$303 per month is the support to which K is legally entitled to because it is based upon Mr. J's ability to pay support.

This requires a brief discussion of Mr. J's earnings history. Mr. J has a spotty work history. In 2009, he earned over \$87,000 working for Facility X. It is unknown what position he held. In 2012, he was employed for only the third and fourth quarters and had reported earnings in the amount of \$7,160.<sup>5</sup> The only income reported for 2013 and 2014 come from unemployment benefits in the amounts of \$4,600 and \$276 respectively.

Ms. X filed the appeal so she has the burden of proving CSSD's March 6, 2015 order is incorrect.<sup>6</sup> She has met this burden.

Mr. J has the obligation to prove his earning capacity. The record is devoid of evidence that he is physically or mentally incapacitated. Based on his past earning capacity, the evidence establishes that it is more likely than not that Mr. J is voluntarily and unreasonably unemployed or underemployed. Because Mr. J's reported earnings for the last four years are less than 10% of his highest earnings, the record does not support a finding that his support should be set based upon Mr. J's ability to pay support based upon annual earnings in the amount of \$87,000 per year.<sup>7</sup> Rather, it is more likely than not that his ability to pay if he were not voluntarily unemployed or underemployed would be at the minimum wage. Therefore, CSSD is correct to impute earnings to Mr. J at full time minimum wage plus his other sources of income.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>8</sup> If the newly calculated child support amount is more than a 15%

---

<sup>4</sup> Exh. 10.

<sup>5</sup> Exh. 8.

<sup>6</sup> 15 AAC 05.030(h).

<sup>7</sup> This is based upon the amount of time that has passed since Mr. J was employed and earning \$87,000 per year.

<sup>8</sup> AS 25.27.190(e).

change from the previous order, Civil Rule 90.3(h)<sup>9</sup> assumes “material change in circumstances” has been established and the order may be modified. A 15% reduction from the prior amount of \$427 is \$362. The revised child support amount is \$303 per month; this is a presumptive material change in circumstance.

**V. Child Support Order**

1. H S. J is voluntarily and unreasonably unemployed or underemployed. Therefore he should have income imputed to him as if he were working full time at minimum wage.
2. Child support calculated using imputed income is more than a 15% change from the prior order and, therefore, meets the threshold for a material change in circumstance.
3. Mr. J is liable for child support in the amount of \$303 per month for one child effective January 1, 2015, and ongoing.
4. All other terms of the Modified Administrative Child Support and Medical Support Order dated March 6, 2015 remain in full force and effect.

Dated: August 11, 2015

*Signed* \_\_\_\_\_  
Rebecca L. Pauli  
Administrative Law Judge

---

<sup>9</sup> Civil Rule 90.3 contains the guidelines for calculating child support in Alaska. The rule applies to all proceedings in which support is to be determined, whether in court or before CSSD, the administrative agency.

## **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 within 30 days after the date of this decision.

DATED this 25<sup>th</sup> day of August, 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.]