

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

In the Matter of)	
)	
O R. O)	OAH No. 16-1294-CSS
<hr style="width:40%; margin-left:0"/>)	Agency No. 001149273

DECISION AND ORDER

I. Introduction

The Child Support Services Division issued a Modified Administrative Child Support and Medical Support Order adding O O’s son to an existing child support order and increasing Mr. O’s child support obligation. Mr. O appealed.

The division’s decision to add Mr. O’s son to the order was correct. Based on the additional information provided at the hearing and Department of Labor earnings information for Mr. O, the division recalculated the modified support obligation for Mr. O’s two children. Based on these new calculations, Mr. O’s modified child support obligation for the two children, N and P, should be set at \$380 a month effective August 1, 2016. In addition, Mr. O is responsible for arrears of \$98 a month for P for the months of May, June, and July 2016.

II. Facts

O O and T O have two children, N and P. The division ordered Mr. O to pay \$242 a month in support for N in December, 2007.¹ P was born in September, 2008.² In 2013, the division issued an order establishing Mr. O as the father of P.³ In April 2016, Ms. O applied for services from the division.⁴ In October 2016, the division modified Mr. O’s support obligation for N and added P to the support order, setting Mr. O’s support obligation at \$591 a month for two children. Mr. O appealed.

A telephonic hearing was convened on November 30, 2016 and continued on December 9, 2016. Mr. O represented himself. Brandi Estes, Child Support Specialist, represented the division. The custodial parent, T O, participated. The record closed on December 9, 2016.

¹ Exhibit 1 at 1.
² Exhibit 2 at 1.
³ Exhibit 4 at 1.
⁴ Exhibit 2

III. Discussion

Mr. O argued that the division had overstated his income, and that he should not be obligated to pay arrears based on the addition of P to the support order. He also requested credit for direct payments made to Ms. O.

A. *Mr. O's income*

The division's October order was based on wage income of \$27,761 and \$3,420 in ANCSA corporation dividends. Mr. O did not receive a permanent fund dividend. Mr. O argued that the division overstated his wage income. Mr. O was working on the North Slope from April through September of 2016, but that job ended shortly before the support order was issued.⁵ He hopes that he will be rehired in January.⁶ This job, however, is unusual in his work history. He earned significantly less working for three different employers in 2013 through 2015. He also worked as a deckhand for his mother for a few days in July, however, he did not earn any money fishing this year.⁷ He was incarcerated for several months during 2015.⁸ Based on the new information Mr. O presented about his employment, the division recalculated the wage component of his gross income based on wages of \$19,283, a three year average of his actual earnings as reported to the Department of Labor and Workforce Development.⁹ This is a reasonable approach given Mr. O's uneven earnings history.

Mr. O also presented evidence that he only held five shares in the Bristol Bay Native Corporation, not 100 shares.¹⁰ The division reduced the figure for Mr. O's dividend income to \$84.

With these changes and corresponding adjustments to the allowable deductions, the division calculated Mr. O's adjusted annual income at \$16,894 and his monthly child support payment for two children at \$380.¹¹ Mr. O's support obligation for two children should be \$380 a month.

B. *Addition of P and arrears*

At the hearing, Mr. O acknowledged that P was his child and he did not take issue with the addition of P to the child support order. However, he did argue that he should not have to

⁵ Exhibit 7 at 2.

⁶ Testimony of O.

⁷ *Id.*

⁸ Exhibit 7 at 2; Exhibit 9 at 2.

⁹ Exhibit 9.

¹⁰ Exhibit 7 at 5.

¹¹ Exhibit 10.

pay arrears accrued during the third quarter of 2016.¹² Specifically, he argues that the division should have notified him of the arrears and of the increase in his child support obligation due to the addition of P while Mr. O was still working.

The division notified Mr. O of his financial responsibility for P in 2013, when it established paternity.¹³ Also, the division notified both parents in July 2016 that it was reviewing whether P should be added to the existing support order.¹⁴ This was two months before Mr. O's job ended. Therefore, Mr. O had ample notice before the division added P to the support order in October, 2016.

Alaska law generally considers unemployment to be a temporary circumstance that does not justify a reduction in a parent's child support obligation.¹⁵ It is more likely than not that Mr. O's unemployment is a temporary circumstance, and that he will be able to start paying off any arrears that have accrued once he starts working again.

Finally, the fact that Mr. O was unemployed at the time he received the October 2016 order does not affect the date for calculation of arrears. When a parent files an application for services, the division will establish arrears beginning on the date of the application and up to the effective date of the ongoing support obligation for the child.¹⁶ The division established Mr. O's arrears beginning in May, 2016, the month when Ms. O applied for services, and continuing through July, 2016.¹⁷ Since Ms. O applied for services in May 2016 and the modified order is effective beginning August 2016, the division correctly established arrears for May through July 2016.

C. Direct payments to Ms. O

Mr. O requested credit for direct payments made to Ms. O. He provided a receipt for a \$1,000 deposit into Ms. O's account.¹⁸ The child support regulations do allow the division to credit an obligor for direct payments to the custodial parent, but only if the obligor provides evidence not only that the payment was made, but also that both parents intended the payment to be a direct payment of child support. The intent requirement applies to credits against ongoing

¹² Exhibit 7 at 2.

¹³ Exhibit 4.

¹⁴ Exhibit 5.

¹⁵ See *In re W.M.T.*, OAH No. 12-0743-CSS (December 14, 2012) at 3 - 4, available at <http://aws.state.ak.us/officeofadminhearings/Documents/CSS/CSS120743.pdf>.

¹⁶ 15 AAC 125.105(a)(2).

¹⁷ Exhibit 2 at 1.

¹⁸ Exhibit 7 at 3.

support as well as arrears.¹⁹ Mr. O may have intended the \$1,000 deposit as a direct payment of child support, but Ms. O testified that she did not regard it as such. Because Mr. O failed to provide clear and convincing evidence that both parents regarded the payment as a direct payment of child support, Mr. O is not entitled to a credit for this payment.

IV. Conclusion

Mr. O did not dispute the addition of his son P to his existing child support order. The division's revised calculations reflect a reasonable estimate of Mr. O's future earnings based on an average of his earnings over the past three years. The division correctly established arrears for the time between the date Ms. O applied for services and the effective date of the modified order.

If Mr. O's earnings increase or decrease significantly in the future, either parent may request another modification.

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

V. Child Support Order

The division's Modified Administrative Child Support and Medical Support Order dated October 10, 2016 is adjusted as follows. All other provisions of the order remain in effect.

1. Mr. O's paternity of P is established; P was correctly added to the child support order for N.
2. Mr. O's modified ongoing child support for N and P is set at \$380 a month, effective August 1, 2016.
3. Mr. O is liable for additional child support arrears for P of \$98 a month for the months of May, June, and July 2016.

Dated: December 28, 2016.

Signed _____
Kathryn L. Kurtz
Administrative Law Judge

¹⁹ 15 AAC 125.465(a); 15 AAC 125.105(b).

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 27th day of January, 2017.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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