

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

IN THE MATTER OF:	)	
	)	OAH No. 04-0149-CSS
J. R. W.	)	CSSD NO. 001123445
_____	)	DOR NO. 040749

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor J. R. W.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 8, 2004. The Obligee child is K., DOB 00/00/96.

The formal hearing was held on December 21, 2004. Mr. W. did not appear; the Custodian, I. G. V., participated by telephone. David Peltier, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on December 31, 2004.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. W.'s appeal should be denied; CSSD correctly calculated his child support from his actual income, including the PFD.

**II. Facts**

**A. History**

On November 5, 2003, CSSD served an Administrative Child and Medical Support Order on Mr. W.<sup>1</sup> He requested an administrative review.<sup>2</sup> On September 8, 2004, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. W.'s ongoing child support at \$50 per month, with arrears of \$10,602 for the period from February 2000 through September 2004.<sup>3</sup> Mr. W. filed an appeal on October 15, 2004. It states CSSD used his wife's income, not his, and he has not received a PFD in twelve years.<sup>4</sup>

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<sup>1</sup> Exh. 2.

<sup>2</sup> Exh. 3.

<sup>3</sup> Exh. 5.

<sup>4</sup> Exh. 6.

Mr. W. did not appear for the formal hearing. CSSD stated it used Mr. W.'s earnings as reported to the Alaska Department of Labor for each year's calculation, except 2002. For that year, CSSD used the minimum wage of \$5.65 per hour.<sup>5</sup>

CSSD also stated Mr. W. was reported to be incarcerated from January 26, 2004 through mid-October 2004, when he reported a new address and began receiving unemployment benefits (UIB). CSSD surmised Mr. W. is working again because Alaska Department of Labor records indicate he received only one UIB check.

The Custodian, Ms. V., testified Mr. W.'s last contact with her and the Obligee K. was a letter he sent K. in January 2004. Ms. V. said the letter had a picture of Mr. W. with trucks and a snowmachine, and he said he was self-employed. Other than that, Ms. V. said she had no other information regarding Mr. W.

### **B. Findings**

Based on the evidence in the record and after due consideration, I hereby find:

1. Mr. W. did not meet his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h);
2. CSSD correctly calculated Mr. W.'s child support obligation at \$96 per month for 2000, \$122 per month for 2001, \$196 per month for 2002, \$440 per month for 2003, and \$50 per month for 2004;
3. Upon his release from incarceration, Mr. W.'s child support as of November 2004 returns to \$440 per month, the amount his support was set at prior to his incarceration.

### **III. Discussion**

Mr. W. filed an appeal on October 15, 2004. However, he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.<sup>6</sup> 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."

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<sup>5</sup> See Exh. 5 at pg. 13.

<sup>6</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

CSSD correctly calculated Mr. W.'s child support for 2000-2004, using his Alaska Department of Labor wages for each year except 2002. For that year, CSSD used the Alaska minimum wage, as directed by its regulations.<sup>7</sup> CSSD included the PFD in each calculation, even though Mr. W. stated in his appeal that he had not received one in 12 years. It is not known why Mr. W. has not applied for the dividend over the years, but CSSD was correct to include it in Mr. W.'s child support calculations. Child support regulations require CSSD to include the PFD amount in calculating support for any obligor who is a state resident, unless "the evidence available to the agency indicates that the parent is not eligible" for a PFD.<sup>8</sup>

Mr. W. claimed in his appeal that CSSD used his wife's income, but he is mistaken. There is no information in the record about his wife or her income, and the documents CSSD submitted show only Mr. W.'s income was used to calculate his child support obligation.

One change needs to be made to CSSD's Amended Administrative Child Support and Medical Support Order. CSSD set Mr. W.'s support at \$50 per month for 2004 because he was incarcerated from January 26, 2004 through mid-October 2004. Because he has been released, however, Mr. W.'s ongoing child support as of November 2004 should return to \$440 per month, the amount he was being charged prior to going to jail. His incarceration was a temporary reduction in income that does not require an ongoing support order of \$50 per month now that he has been released.<sup>9</sup> CSSD stated after Mr. W. left jail, he received only one UIB payment, so it appears Mr. W. has returned to the workforce. Mr. W. did not appear at the hearing or present any evidence to the contrary.

#### **IV. Conclusion**

CSSD calculated Mr. W.'s child support for all the years at issue using his actual income, except for the year 2002, when CSSD used the Alaska minimum wage. The PFD should be included in Mr. W.'s support calculations because he has not shown why he is not eligible for the PFD. Mr. W.'s ongoing child support should be set at \$440 per month as of November 2004, because his incarceration ended the month before. Other than that one change, CSSD's Amended Administrative Child Support and Medical Support Order should be affirmed.

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<sup>7</sup> 15 AAC 125.050(a).

<sup>8</sup> 15 AAC 125.050(d)(1).

<sup>9</sup> *See, Douglas v. State*, 880 P.2d 113 (Alaska 1994).

**V. Child Support Order**

1. CSSD's September 8, 2004, Amended Administrative Child Support and Medical Support Order is affirmed, with one minor change;
2. Mr. W. is liable for ongoing child support of \$440 per month as of November 2004.

DATED this 25th day of May, 2005.

By: Signed \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

**Adoption**

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of J. R. W. be adopted as of this date and entered in his file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

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 of the date of this decision.

DATED this 25th day of May, 2005.

By: Signed \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge

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