

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

IN THE MATTER OF:)

S. M. R.)

) OAH No. 04-0192-CSS

) CSSD NO. 001130762

DECISION AND ORDER

I. Introduction

This matter involves the Obligor S. M. R.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 5, 2004. The Obligee children are J. and K., twins born on 00/00/03.

The formal hearing was held on January 20, 2005. Ms. R. appeared telephonically; the Custodian in this matter is the State of Alaska. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 20, 2005.

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 Ms. R.'s appeal should be granted and her child support should be calculated based on her actual income.

II. Facts

A. History

On August 11, 2004, CSSD served an Administrative Child and Medical Support Order on Ms. R.¹ She requested an administrative review.² Following the review, CSSD issued an Amended Administrative Child and Medical Support Order on October 5, 2004, that set ongoing support at \$203 per month for two children, with arrears of \$1218 for the period from May 2004 through October 2004.³ Ms. R. filed an appeal on November 8, 2004.⁴

At the formal hearing, Ms. R. testified that she cannot afford the child support amount CSSD calculated. She testified the State took custody of J. and K. in April 2004, and that she is

¹ Exh. 1.

² Exh. 4.

³ Exh. 7.

⁴ Exh. 9.

actively working toward getting the children back. She said she has the children three days per week from 10 a.m. to 6 p.m., and occasionally overnight or on Saturday. Ms. R. said she also takes care of them for the foster mother if she needs assistance. She added she would be attending a meeting approximately one week after the hearing in which she would be discussing with her social worker the return of J. and K.

Ms. R. added she did not work very much in 2004. She said the Division of Public Assistance gave her a 1-year exemption from having to work after the twins were born in July 2003. At the time of the hearing, Ms. R. stated she was working at a local restaurant part-time, and filed copies of her paystubs. As of the October 31, 2004, pay period, Ms. R.'s year-to-date wages totaled \$2259.26.⁵ She stated she cannot pay her bills and otherwise support herself with so much money taken out of her check for wage garnishment. Ms. R. said she can afford to pay \$100 per month at most, not the \$203 figure CSSD calculated.

B. Findings

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

1. As required by 15 AAC 05.030(h), Ms. R. met her burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order is incorrect;
2. Ms. R. earned \$2259.26 through October 31, 2004, which equals annual wages of \$2711.11 when extrapolated for one full year;
3. Annual wages of \$2711.11, plus the PFD of \$919.84, equals annual income of \$3630.95, which yields a child support calculation of \$77 per month for two children.

III. Discussion

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

CSSD calculated Ms. R.'s 2004 child support at \$203 per month for two children, based on wages of \$8839.71, plus the 2003 PFD of \$1107.56.⁷ CSSD projected the annual wage

⁵ Exh. 9 at pg. 2.

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

⁷ Exh. 8 at pg. 2.

figure from income information Ms. R. provided prior to the administrative review.⁸ CSSD's calculation also used the 2003 PFD figure rather than the 2004 amount.

Ms. R.'s most recent paystub before the hearing shows her year-to-date wages as of October 31, 2004, were \$2259.26.⁹ When this figure is extrapolated for a full year, it equals annual wages of \$2711.11. This is an accurate estimation of Ms. R.'s earnings for 2004, and when it is used in her 2004 child support calculation, along with the 2004 PFD figure, it results in a child support amount of \$77 per month for two children. Income should not be imputed to Ms. R., given her 1-year work exemption that lasted through July 2004. By the time her work exemption expired, Ms. R. already was taking care of her children in the home for three days per week, plus some weekend days, and she was working with social workers to establish a timetable for having J. and K. return to her home. Since the twins are just two years old, it appears that Ms. R. will not be in a position to work full-time until the children are older.

IV. Conclusion

Ms. R. met her burden of proving by a preponderance of the evidence that CSSD's calculation was incorrect. When her annual income is projected using her most recent paystub, Ms. R.'s child support obligation is correctly calculated at \$77 per month for two children.

V. Child Support Order

1. Ms. R. is liable for child support in the amount of \$77 per month for the period from May 2004 through December 2004;
2. Ms. R. is liable for child support in the amount of \$77 per month for January 2005 through June 2005, and ongoing.

DATED this 7th day of June, 2005.

By: Signed _____
Kay L. Howard
Administrative Law Judge

⁸ Exh. 6; Exh. 7 at pg. 7.

⁹ Exh. 9 at pg. 2.

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 S. M. R. be adopted as of this date and entered in the 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 7th day of June, 2005.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

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