

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

IN THE MATTER OF:)	
)	OAH No. 04-0209-CSS
D. R. B.)	CSSD NO. 001131010
_____)	DOR NO. 040814

DECISION AND ORDER

I. Introduction

This matter involves the Obligor D. R. B.'s appeal of the Amended Administrative Child and Medical Support Order CSSD issued on November 15, 2004. The Obligee child in this case is N., DOB 00/00/02.

The formal hearing was held on February 1, 2005.¹ Mr. B. appeared in person; the Custodian, M. A. C., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The record closed on February 18, 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 that Mr. B.'s appeal should be granted and that his child support should be based on his actual annual income, not the estimated figures CSSD used.

I. Facts

A. History

On September 23, 2004, CSSD served an Administrative Child and Medical Support Order on Mr. B.² He requested an administrative review.³ Following the administrative review on November 15, 2004, CSSD issued an Amended Administrative Child and Medical Support Order that set ongoing child support at \$678 per month, with arrears of \$4068 for the period from June 2004 through January 2005.⁴ Mr. B. filed an appeal on November 21, 2004.⁵

¹ The hearing was held under Alaska Statute 25.27.170.

² Exh. 5.

³ Exh. 6.

⁴ Exh. 8.

⁵ Exh. 9.

At the formal hearing, Mr. B. asserted that CSSD's calculations are incorrect because he does not earn the income CSSD attributed to him. Mr. B. testified that he is an airplane mechanic and works at N.A. C. His pay is \$18.92 per hour, and he earns about \$38,000-\$40,000 per year. Mr. B. stated his income in 2004 was abnormally high because he worked over 300 hours of overtime on upgrade work that had to be done on all of the company's aircraft. He said he also worked occasionally as the relief lead mechanic, for which he was paid \$23.50 per hour. Even with the overtime he earned, however, Mr. B. asserted he did not earn the total amount CSSD estimated in its November 2004 calculation, as shown by his 2004 W-2.⁶ He said CSSD used the wages he earned early in the year to estimate his total income for the year, but most of his overtime was during that period, so he did not earn as much at the end of the year as earlier.

Mr. B. claimed he will not earn any overtime in 2005, nor will he have to fill in as relief lead mechanic because all of the upgrade work has been completed and the company is talking about downsizing, which may involve layoffs. Mr. B. provided copies of paystubs from 2004 that confirm his testimony about working a large amount of overtime.

After the hearing, CSSD filed a Post-Hearing Brief. The brief stated CSSD contacted C. D., the Director of Maintenance for N. A. C., who confirmed Mr. B.'s testimony and stated he does not expect Mr. B. to work overtime or as a relief lead mechanic in 2005 because the company is downsizing.⁷

CSSD revised Mr. B.'s 2004 child support calculation to \$647 per month, based on the income of \$52,882.10 reported on his 2004 W-2.⁸ CSSD also prepared a support calculation of \$495 per month for 2005 based on Mr. B.'s estimated annual earnings of \$39,353.60, which was determined using his hourly wage of \$18.92 per hour, but without figuring in overtime or relief lead mechanic time.⁹

B. Findings

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

1. Mr. B. met 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);

⁶ Exh. 11.

⁷ Post-Hearing Brief at pg. 1.

⁸ Exh. 12 at pg. 2.

2. Mr. B.'s total income in 2004 was \$52,882.10, which includes a significant amount of overtime work;
3. Mr. B.'s 2004 income results in a child support amount of \$647 per month;
4. Overtime work will not be available to Mr. B. in 2005 because his company is downsizing;
5. Mr. B. earns \$18.92 per hour, which results in estimated income of \$39,353.60 for a full-time employee working 2080 hours;
6. Mr. B.'s estimated 2005 income results in a child support amount of \$495 per month.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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."

Mr. B. testified he did not earn the total amount of income CSSD attributed to him for 2004. He stated while he did work a large amount of overtime, most of it was in the first part of 2004, so CSSD's estimate of his total income for the year was too high. As to 2005, Mr. B. testified he no longer has the overtime available to him because the project is finished and the company is considering downsizing. Mr. B. said his regular wage is \$18.92 per hour.

CSSD, upon listening to Mr. B.'s testimony, accepted his evidence and revised the 2004 child support calculation to \$647 per month, using the income reported on Mr. B.'s 2004 W-2. For 2005, CSSD estimated Mr. B.'s total income for the year based on his hourly wage, which resulted in a support amount of \$495 per month.

IV. Conclusion

Mr. B. met his burden of proving CSSD's calculation was incorrect. The agency revised the 2004 calculation and prepared a new one for 2005. I found these calculations were correct pursuant to Civil Rule 90.3. Accordingly, I issue the following child support order:

⁹ Exh. 12 at pg. 3.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

V. Child Support Order

1. Mr. B. is liable for child support in the amount of \$647 per month for the period from June 2004 through December 2004;
2. Mr. B. is liable for child support in the amount of \$495 per month for January 2005 through April 2005 and ongoing.

DATED this 5th day of April, 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 D. R. B. 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 5th day of April, 2005.

By: Signed
Terry L. Thurbon
Chief Administrative Law Judge

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