

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

IN THE MATTER OF:)

R K. H)

_____)

OAH No. 04-0224-CSS
CSSD CASE No. 001110765

DECISION AND ORDER

I. Introduction

This case concerns the obligation of R K. H for the support of C H (DOB 00/00/97). R H and K H share custody of C H.

The Child Support Services Division issued an administrative child support order on September 24, 2004, establishing Mr. H's support obligation in the amount of \$507 per month, effective April 1, 2004. Both parties requested an administrative review. Following review, the division issued an amended order setting support at the amount of \$256 per month. Ms. H appealed.

Administrative Law Judge Andrew Hemenway was appointed to hear the case. On February 17, 2005, the administrative law judge conducted a telephonic hearing under AS 25.27.170 and 15 AAC 05.030.¹ The hearing was recorded. R H and K H participated. David Peltier, Child Support Specialist, represented the division. The record was closed on March 28, 2005.

Based on the preponderance of the evidence in the record and the testimony at the hearing, I conclude that Mr. H's ongoing child support obligation should be set at \$444 per month.

II. Facts

R and K H both have custody of their son, C, 50% of the time.

Mr. H works as an oil field hand. During 2003, he worked for no name at an oilfield in Kazakhstan. In 2003, Mr. H earned wages of \$55,790 from no name,² a capital

¹ See 15 AAC 125.118(f).

² Exhibit 7, page 15.

gain in the amount of \$732 from a sale of stock³ and dividend income of \$181,⁴ for total income of \$56,703. Mr. H stopped working for no name in the winter of 2003-2004. He cashed in his accumulated vacation pay and took some time off before returning to work.⁵

On March 25, 2004, Mr. H started working on the North Slope for no name business, which remains his employer. His base wage is \$22 per hour, with substantial overtime. From March 25-December 31, 2004, Mr. H was paid wages of \$52,126.68, or about \$1,303.17 per week,⁶ equivalent to annual wages of \$67,764.84.⁷ From January 1-30, 2005, Mr. H was paid wages of \$7,034.50, or about \$1,406.90 per week,⁸ equivalent to annual wages of \$73,158.⁹ A reasonable estimate of Mr. H's ongoing annual income is \$74,258.¹⁰ Mr. H provided medical insurance for C at a cost of \$65.24 per month from July 1-December 31, 2004,¹¹ and \$54.76 per month effective January 1, 2005, and continuing.¹² In 2005, Mr. H has regularly contributed in excess of 7.5% of his wages to a voluntary retirement plan.¹³

K H is self-employed as a hair stylist. She rents space at a salon. Her net annual income in 2003 was \$14,838, including self-employment income of \$12,455¹⁴ wages of

³ Exhibit 7, page 10.

⁴ Exhibit 7, page 15.

⁵ Mr. H testified that his last day of work was in December, 2003, but that he did not go off the payroll until February 13, 2004. His 2004 earnings from no name, essentially consisting of accumulated vacation pay, totaled \$8,688.84 (\$268.36 + \$6,336.59 + \$2,083.89). Exhibit 12, pages 1, 2, 4. (Income shown on Exhibit 12, page 3 was earned and paid in 2003.)

⁶ Exhibit 11, page 5. His weekly wage reflects the approximately 40 weeks from March 25, 2004-December 31, 2004 ($\$52,126.68 \div 40 = \$1,303.17$).

⁷ $\$1,303.17 \times 52 = \$67,764.84$.

⁸ Exhibit 11, pages 2-4. Mr. H is paid weekly, with the pay period running from Monday through Sunday. He submitted three weekly paystubs for January 3-9, 10-16, and 24-30, issued January 14, 21, and February 4, respectively. They show earnings for those three weeks of \$5,538.50 and year-to-date earnings through January 30 of \$7,034.50. The difference (\$1,496.00) is not due to earnings for the week of January 17-23, because the January 14 paystub has the identical difference as the February 4 paycheck. It appears that the extra \$1,496 in year-to-date earnings reflects a paycheck issued on January 7 for work from December 27, 2004-January 2, 2005 and that the year-to-date earnings reflect five weeks' wages, not one month's wages. The calculation of weekly wages reflects that analysis ($\$7,034.50 \div 5 = \$1,406.90$).

⁹ $\$1,406.90 \times 52 = \$73,158.80$.

¹⁰ This includes wages (\$73,158), dividends (\$181, based on 2003), and the estimated 2005 Alaska Permanent Fund dividend (\$919), but excludes one-time capital gains from the sale of stock, as occurred in 2003.

¹¹ Exhibit 7, page 27.

¹² Exhibit 7, page 28.

¹³ Exhibit 11, pages 2-4.

¹⁴ Exhibit 7, page 8. Ms. H had gross self-employment income of \$22,119. For purposes of child support, ordinary and necessary business expenses are deducted to establish adjusted income. 15 AAC

\$1,204,¹⁵ an Alaska Permanent Fund dividend of \$1,108,¹⁶ and dividends and interest of \$71.¹⁷ In 2004, her self-employment net income was about \$3,000 more than in 2003.¹⁸ A reasonable estimate of Ms. H's net income in 2004 and ongoing is \$14,209.03.¹⁹

III. Discussion

In a shared custody situation, child support is determined by first calculating the basic child support obligation of both parents (treating both as if the other parent were the sole custodian) and then adjusting the basic obligation to reflect the percentage of time that the child spends with each parent.²⁰ For one child, a parent's basic support obligation is 20% of that parent's adjusted annual income,²¹ that is, income after allowable deductions for such things as taxes and contributions to a retirement plan (to a maximum of 7.5% of income).²²

Applying these principles, the division initially set the support obligation at \$507 per month, based on the couple's joint 2003 tax return. Both parties requested review. Mr. H objected that the division had miscalculated his arrears, based on direct payments; Ms. H confirmed direct payments totaling \$1,200.²³

Although neither party had objected to the division's support calculations, the division's review resulted in a substantial reduction in Mr. H's support obligation, primarily because it reduced the 2004 income attributed to Mr. H. The reduction was based on Mr. H's year-to-date paystub from no name business.²⁴ That paystub reflected

125.065(a). The net self-employment income of \$12,455 consists of Ms. H's gross self-employment income (\$22,119) minus deductions for equipment (\$5,400), supplies (\$3,302), and other expenses (\$962), but not for her automobile.

¹⁵ Exhibit 7, page 15; Exhibit 7, page 20.

¹⁶ Exhibit 7, page 20.

¹⁷ Exhibit 7, page 20.

¹⁸ Ms. H testified that her 2004 gross was "about" \$3,000 more than in 2003. Her major expense is for rent; she testified that the rent increased from \$450 per month to \$455 per month.

¹⁹ This is the amount shown by the division in its posthearing brief for 2005. Exhibit 13, page 5. The division's figures reflect 2003 self-employment income plus \$3,000, and an Alaska Permanent Fund dividend. Because the self-employment income is an estimate, and the record does not establish that Ms. H will continue to have wages (as she did in 2003), the division's figures for 2005 are reasonable. However, they should also be used for 2004, rather than projecting forward the 2003 income (as the division did in Exhibit 13, page 2) since Ms. H testified that her self-employment income in 2004 was about \$3,000 more than in 2003.

²⁰ 15 AAC 125.070(b); Civil Rule 90.3(b).

²¹ 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

²² 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

²³ Exhibit 4, page 1; Exhibit 5, page 1-2. Ms. H's appeal form shows direct payments totaling \$1,200.

²⁴ Exhibit 9, Page 5.

earnings beginning in March and did not accurately reflect Mr. H's actual earnings for all of 2004, which included income from no name. Ms. H appealed, correctly pointing out that the division had understated Mr. H's actual 2004 earnings.

Following the hearing, the division recalculated the support obligation, based on income in 2004 of \$66,257.70 for Mr. H and \$13,374.84 for Ms. H, and anticipated income in 2005 of \$84,414 for Mr. H and \$16,374.84 for Ms. H.²⁵ The recalculation substantially overstated Mr. H's ongoing income, because it treated Mr. H's January, 2005, income as equivalent to one month's income rather than five weeks' income. At the same time, the recalculation understated Ms. H's 2004 actual income, because it was based on her 2003 income rather than her 2004 income (which, she testified, was about \$3,000 more than in 2003).

Mr. H's support obligation for 2004 should be based on his actual wage earnings during the time the support order was in effect. His support obligation for 2005 and ongoing should be based on his actual wage earnings for his first five pay weekly pay periods in 2005. The shared custody calculation should be based on Ms. H's testimony as to her self-employment earnings in 2004, rather than on her 2003 earnings. Both parties should be provided applicable deductions from income in accordance with the standard child support calculator.²⁶ After application of the appropriate deductions and credits, the basic support obligation (that is, the obligation if the other parent was the sole custodian) for Mr. H in 2004 was \$860 and in 2005 and ongoing is \$829²⁷ and for Ms. H is \$237 for 2004-2005 and ongoing. As shown in Appendix B, adjusted to reflect equally shared custody (50-50), Mr. H has a support obligation for 2004 in the amount of \$467, and in 2005 and ongoing in the amount of \$444. Calculations for arrearages and ongoing payments should include credits for direct payments in 2004

²⁵ Exhibit 13.

²⁶ The appropriate deductions and credits for Mr. H are shown on Appendix A. The deductions include the maximum allowable 7.5% of income for contributions to a voluntary retirement fund in 2005, but no retirement deduction for 2004. The record does not indicate that Mr. H made such voluntary contributions in 2004. Exhibit 7, pages 31-33; Exhibit 11, page 5. Ms. H's deductions and credits are shown on Exhibit 13, page 5.

²⁷ Although Mr. H's average weekly wages increased in 2005, the deduction for voluntary retirement contributions reduces his support obligation.

(\$1,200) and for medical insurance as appropriate (\$391.44 in 2004; \$54.76 per month in 2005).²⁸

IV. Conclusion

Ms. H established by a preponderance of the evidence that the amended support order in the amount of \$256 per month was erroneous.

CHILD SUPPORT ORDER

1. Mr. H's ongoing child support obligation is set at the rate of \$444 per month effective May 1, 2005.
2. Mr. H is liable for any arrears accrued beginning April 1, 2004 through December 31, 2004 at the rate of \$467 per month, and beginning January 1, 2005 through April 30, 2005 at the rate of \$444 per month; credits against arrears should be provided for direct payments in the amount of \$1,200, for medical insurance in the amount of \$391.44 for 2004 and at the rate of \$54.76 per month from January 1, 2005 through April 30, 2005.

DATED: April 28, 2005

Signed

Andrew M. Hemenway
Administrative Law Judge

ADOPTION

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of R K. H 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 ten (10) days after adoption of the written decision of the hearing officer, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief

²⁸ Mr. H provided medical insurance effective July 1-December 31, 2004, at the cost of \$65.24 per month. For that six-month period, he paid premiums totaling \$391.44 ($\$65.24 \times 6 = \391.44).

and, if mailed, must be addressed to: 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 thirty (30) days of the date of this decision.

DATED this 28th day of April, 2005.

By: Signed
Terry Thurbon
Chief Administrative Law Judge

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