

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

IN THE MATTER OF:)	
)	
T D. H)	
)	
_____)	OAH No. 05-0746-CSS CSSD Case No. 001012992

DECISION AND ORDER

I. Introduction

This case concerns the obligation of T D. H for the support of T H (DOB 00/00/93) and D H (DOB 00/00/94). The custodian of record is N G.

A child support order in the amount of \$212 per month was issued, dated October 21, 1996. On August 15, 2005, the Child Support Services Division issued a modified administrative child support order in the amount of \$371 per month, effective June 1, 2005. Mr. H filed an appeal and requested an administrative hearing.

The Office of Administrative Hearings conducted a telephonic hearing on November 3, 2005. Mr. H participated and provided testimony. Ms. G was unable to attend due to family emergency. A supplemental hearing was scheduled for November 22, to provide a further opportunity for Ms. G to participate. Notice was sent to her address on record by certified mail and was returned unclaimed. Ms. G was not available at her telephone number of record on November 22 and the record was closed.

II. Facts

In 1996, at the time the prior support order was issued, T H was driving a mail truck in the private sector, earning \$105 per day for four days a week of work.

In 2001, Mr. H married. He has one child of the marriage, currently four years old, and his wife has a child from a prior relationship, age 13. His wife is presently unemployed and receiving worker's compensation for an injured shoulder. She receives \$370 every two weeks.

In 2004, Mr. H was unemployed for a period of time and received \$4,441 in unemployment compensation. Mr. H started working as a forklift operator at no name, an apple and fruit wholesaler in Washington, at a wage of \$8.90 an hour. He earned

\$10,001.73 in wages from no name in calendar year 2004, and an additional \$594 from a short-time job. His total annual income in 2004 was \$15,036.73.

The fruit season peaks from September to November, during which time Mr. H gets substantial overtime. In 2005, the season has been bad and Mr. H is not sure if he will be laid off at some point in 2006. At the time of the hearing, his last paycheck was \$284 for a week. Through his most recent paycheck in 2005, Mr. H had earned \$18,174.65. Based on his wages through May, 2005, his anticipated annual earnings for 2005 were around \$19,287.84.

The total household income in 2004 was \$27,892, including Mr. H's total income of \$15,036.73 and his wife's income. The couple paid no federal income tax and received an earned income credit.

The household rent is \$550 per month, including trash and water. The food cost is about \$450 per month. Electricity is \$100 per month. Telephone, cable TV and Internet service comes to \$195 per month. The couple own two vehicles, both more than ten years old and fully paid for, and pay about \$250 per month for gas, \$45 per month for automobile insurance, and about \$200 per month on automobile maintenance. Personal care items come to about \$100 per month. These household expenses total about \$1,890 per month. The couple owe \$3,000 to a collection agency. Entertainment is \$100 per month.

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,¹ that is, total income after allowable deductions for such things as taxes.² In this case, Mr. H's total income in 2004 was \$15,036.73. For the first 20 weeks of 2005, his total income was \$7,418.45, equivalent to an annual total income of \$19,287.84, and his income through the date of the hearing was \$18,174.65. The evidence indicates that Mr. H's income in 2005 will be at least \$19,287.84. Based on that income level, Mr. H's presumptive child support obligation is \$371 per month, applying standard deductions as shown on exhibit 5, page 1.

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

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

The presumptive support obligation may be reduced if the amount as calculated under 15 AAC 125.070 would result in a manifest injustice due to unusual circumstances.³ The obligor must provide clear and convincing evidence of manifest injustice.⁴ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.⁵

Mr. H testified that the monthly household expenses are less than \$2,000. In 2004, the household's total income was approximately \$2,324 per month, which would be sufficient to cover a \$371 monthly child support obligation without undue hardship. Similarly, at Mr. H's projected 2005 income, plus his wife's biweekly payments as an injured worker, the household income would be sufficient to cover that obligation.

Looking at only Mr. H's income and expenses yields the same conclusion. The total household expenses are only 50% Mr. H's responsibility (except for his child and his wife's child, who are solely the responsibility of their own parent in the household). Reduced by 50%, Mr. H's share of the household expenses is less than \$1,000 per month. In 2004, when he did not work for the full year, Mr. H's actual monthly income was more than \$1250 per month, and his income in 2005 was in excess of \$1,500 per month.

There is no evidence that Mr. H's wife is permanently disabled, and at some point she can be expected to contribute a substantially greater amount to the household expenses. In addition, the evidence indicates that in 2006 Mr. H will receive an earned income tax credit, rather than paying income tax, increasing the total household resources. Finally, Mr. H did not submit evidence to show that a reduction of child support would not adversely impact T and D.⁶ Although the division did not oppose a reduction from the standard amount, Mr. H did not establish manifest injustice by clear and convincing evidence.

IV. Conclusion

The child support obligation should be modified to reflect current income, and should not be reduced from the presumptive amount owed.

³ 15 AAC 125.075(a)(2).

⁴ 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

⁵ *See* 15 AAC 125.080.

⁶ Doyle v. Doyle, 815 P.2d 366, 373 (Alaska 1991).

ORDER

1. Mr. H is liable for any arrears accrued from June 1 through December 31, 2005, at the rate of \$371 per month.
2. Mr. H's ongoing support obligation is \$371 per month, effective January 1, 2006.

DATED: December 16, 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. 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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 26th day of January, 2006.

By: *Signed* _____
Signature
Tom Boutin _____
Name
Deputy Commissioner _____
Title

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