

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

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| In the Matter of |) | |
| A P. R |) | OAH No. 05-0862-CSS |
| _____ |) | CSSD No. 001099267 |

CHILD SUPPORT DECISION & ORDER

I. Introduction

A P. R filed a request for formal hearing on the Child Support Service Division's September 16, 2005 Amended Child Support and Medical Support Order. A hearing was held December 6, 2005. Mr. R and the custodian, M W, participated by telephone. David Peltier represented the division. Mr. R's appeal is granted; his arrears for the year 2002 will be recalculated using the \$50 per month minimum.

II. Facts

The division's September 16, 2005 Amended Child Support and Medical Support Order set Mr. R's ongoing child support for the child, J, at \$50 per month and set arrears at \$5,120 through September 30, 2005.¹ The arrears were calculated using \$50 per month in all years except 2002, when support apparently was set at \$160 per month.²

In his appeal, Mr. R challenged the arrears calculation for 2002, testifying at the hearing that he did not make the \$10,712 shown in the division's Exhibit 5 (page 11) for 2002 and that he worked no more than two months that year. Mr. Peltier responded that he could not determine how the division came to impute wages to Mr. R for 2002 and agreed that the order should have calculated arrears for that year at \$50 per month. Ms. W testified that she had no reason to believe that Mr. R had been working during that time either. Mr. R is incarcerated and does not expect to be released under April 2006.

III. Discussion

Under Civil Rule 90.3(c)(3), the lowest amount one parent can be charged for child support when the other parent has custody of the children is \$50 per month. A higher amount of support is required under the rule when the parent earns income. When, as here, the parent is incarcerated and earns no wages, income is not imputed to him.

¹ Division's Exhibit 5, pp. 1-2.

² Division's Exhibit 5, pp. 8-9 (Summary of Support Obligation form).

As the division agreed at the hearing, income should not have been imputed to Mr. R for 2002. Instead, the \$50 per month minimum should have been used. Thus, his arrears for that year should have been \$600 instead of \$1,920.

IV. Conclusion

Mr. R's child support obligation for J should have been calculated at \$50 per month for 2002, as for the other years covered by the September 16, 2005 amended order. Once Mr. R is free and begins working again, his support obligation may need to be modified to reflect his income.

V. Order

It is ordered that

- (1) A P. R's on-going child support is set at \$50 per month for the child, J, effective March 1, 2006.
- (2) A P. R's arrears are set at \$50 per month for the months of June 1999 through December 1999; all the months of 2000, 2001, 2002, 2003, 2004, and 2005; and the months of January and February 2006.

DATED this 9th day of February, 2006.

By: Signed _____
Terry L. Thurbon
Chief 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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 23rd day of February, 2006.

By: Signed
Signature
Terry L. Thurbon
Name
Chief Administrative Law Judge
Title

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