

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

IN THE MATTER OF )  
 )  
 J H )  
 )  
 \_\_\_\_\_ )

Case No. OAH-05-0945-CSS  
CSSD Case No. 001061288

**DECISION & ORDER**

**I. Introduction**

The obligor, J H, appeals a Modified Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 17, 2005. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on January 17, 2006. Mr. H appeared by telephone. The custodian, G L, did not appear; Andrew Rawls represented CSSD by telephone. The child is S H-H (DOB 00/00/90). The administrative law judge issues a support order adopting revised calculations proposed by CSSD.

**II. Facts**

The previous order in this case had set support at \$354 per month. When the custodian returned an electronically-generated request for modification, CSSD recalculated Mr. H' support obligation based on his current annual income, which the division determined by extrapolating Mr. H' income from the first three quarters of 2005. Based on these calculations, CSSD set Mr. H' support obligation to be \$872 per month.

Mr. H lives in no name city with his wife and three children, all of whom are younger than S. Mr. H works in the construction industry. For the last two years, he has enjoyed a relatively high-paying job on a construction project for a museum expansion in no name city. This job was quite some distance from home for Mr. H, and during the project he often stayed in a small travel trailer that a friend let him keep on some property near the project. While this job paid well on an annual basis for the duration of the contract, Mr. H was still unemployed during the winter months when construction shut down. Therefore, CSSD's estimate of Mr. H' annual income based on the first three quarters of 2005 may overstate his actual income for the year.

As the museum that Mr. H has been working on approached completion, the company eliminated overtime work, and Mr. H began working only forty hours per week until the project was finished and the company shut down for the winter. Mr. H ended this job on good terms with the employer, but that company does not currently have any contracts for the next spring

season. Mr. H is uncertain what type of work he might be able to obtain for the next season, but he expects to earn less than he did working on the museum job. Mr. H testified that he would like be closer to home and his family in no name city, but opportunities are limited in the area.

At the hearing, CSSD recommended that Mr. H's support obligation be calculated based on his average income over the last five years. After the hearing, CSSD prepared the following chart showing the amounts of wages reported to the Department of Labor, the amounts Mr. H received for unemployment insurance benefits (UIB), and permanent fund dividends:

Year	Wages	UIB	PFD	Total
2001	\$23,298.27	\$0.00	\$1,850.28	\$25,148.55
2002	\$45,396.71	\$2,880.00	\$1,540.76	\$49,817.47
2003	\$50,031.91	\$6,720.00	\$1,107.56	\$57,859.47
2004	\$74,095.75	\$2,560.00	\$919.84	\$77,575.59
2005	\$40,858.71	\$4,881.00	\$845.76	\$46,585.47
Total	\$233,681.35	\$17,041.00	\$6,264.20	\$256,986.55
Average	\$46,736.27	\$3,408.20	\$1,252.84	\$51,397.31

In this chart, the 2005 wages do not include fourth quarter data, which was not available at the time these calculations were prepared. According to Mr. H' testimony, his fourth quarter income was insubstantial because of the completion of the museum project. Based on an annual income of \$51,397.31, CSSD has calculated that Mr. H' support obligation under Civil Rule 90.3(a) would be \$666 per month for one child.

### **III. Discussion**

Mr. H' statement in his appeal reads as follows:

Your figures are based upon a two year job that is ending. The project will be completed by Christmas leaving me with no income and no immediate prospects for work available. I also have three other children that I am financially responsible for that live with me. We are also living in the bush and with the expense of fuel this season utility costs will be difficult to manage without income.

According to 15 AAC 125.030(d),

If the parent has experienced a wide variation in total income from year to year, the agency will, in its discretion, average income over more than one year to determine the parent's expected actual annual income. Except in unusual circumstances, the agency will not average more than the last three years income.

The chart above shows that Mr. H' income fluctuates significantly over the years. While a three-year average is generally appropriate, this case does present unusual circumstances that call for a

five-year average. Because of Mr. H' recent two-year job on the museum project, a three-year average would unfairly inflate the amount of income. In this case, a five-year average is a better indicator of Mr. H' likely income for the future.

Mr. H argues that his three younger children should be accounted for in his support obligation. Generally, under Civil Rule 90.3(a), support for older children of previous relationships should be deducted from the obligor's income, but support for younger children should not. Civil Rule 90.3(c)(1) allows variation from this rule "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied." This is a very high standard.

Mr. H prepared an expense checklist detailing his monthly expenses. Some of these expenses, such as food, utilities, and vehicle expenses, are rather high. At the same time, the family lives in a cabin owned by Mr. H' grandmother, and they pay no rent or mortgage payment. Mr. H' wife works part-time and earns \$1140 biweekly. Mr. H points out the high cost of living in the bush, but CSSD correctly counters that S also lives in the bush and is subject to the same high costs. While Mr. H' budget is tight for a family of five with one other child to support, I do not find that any hardship to the younger children resulting from Mr. H' obligation to S rises to the level of proof by clear and convincing evidence that manifest injustice would result if Mr. H' support obligation was set at \$666 per month for one child.

#### **IV. Conclusion**

Mr. H' support obligation should be calculated based upon his average annual income over the last five years. There are not unusual circumstances in this case that call for a variation from the Civil Rule 90.3(a) formula. CSSD has correctly calculated Mr. H' support obligation to be \$666 per month for one child.

#### **V. Order**

IT IS HEREBY ORDERED that Mr. H' support obligation be set at \$666 per month for one child, effective October 1, 2005.

DATED this 28<sup>th</sup> day of March, 2006.

By: *Signed* \_\_\_\_\_  
DALE WHITNEY  
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 within 30 days after the date of this decision.

DATED this 13<sup>th</sup> day of April, 2006.

By: Signed  
Signature  
Dale Whitney  
Name  
Administrative Law Judge  
Title

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