

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

In the matter of:)

W. L. S.)

) OAH No. 06-0080 CSS

) CSSD No. 001117680

DECISION AND ORDER

I. Introduction

W. S. appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 30, 2005, raising his monthly child support obligation by 151% from \$505 to \$1,267. The modification order at issue has an effective date of November 1, 2005. The obligee child is A. J. S., born 00/00/97.

Mr. S. came to the hearing in person. A. J. Rawls, Child Support Specialist, appeared for CSSD. The custodial parent, E. S., participated by telephone.

A preliminary informal discussion before the formal hearing resulted in two points of agreement. First, it was agreed that Mr. S.'s 2005 income had been miscalculated by CSSD because the agency essentially double-counted his 25% cost of living allowance. Second, with the income correction it was possible to reach agreement as to the proper support amount for November and December, 2005.

Mr. S. and Ms. S. remained somewhat in disagreement on the proper support amount for 2006. Ms. S. felt that Mr. S.'s 2005 income should guide the calculation of the future support amount. Mr. S. argued that overtime payments he received in 2005 would likely be greatly reduced in 2006, and that a smaller projected income should be used to calculate support. The parties' divergent ways of calculating support resulted in support amounts that were about 15% apart. They were unable to reach a compromise, and so this remaining issue proceeded to formal hearing.

After the hearing, the record remained open until February 24, 2006 for Mr. S. to submit evidence regarding his projected overtime for 2006, and for him to submit a hardship questionnaire, if desired. He submitted the former but not the latter, indicating that he has elected not to seek a hardship adjustment to his child support at this time.

II. Facts

Ms. S. has primary physical custody of A. On October 1, 2005, CSSD notified her that it had reviewed her case and that if a support modification were requested; an increase to approximately \$954 per month was possible. Ms. S. signed the request form that the agency offered, and a Notice of Petition for Modification ensued on October 11, 2005. The modification order at issue in this appeal therefore had an effective date of November 1, 2005.

A. Mr. S.'s 2005 Income

Mr. S. works for the Social Security Administration. In 2005, he had a gross income that has been agreed to be \$80,254.29, consisting of wages, cost of living allowance, and permanent fund dividend. Significantly, this income included payment for approximately 500 hours of overtime.

Mr. S. had monthly retirement deductions from his pay that total \$636.10. Because these exceed the maximum allowable deduction under Civil Rule 90.3, the maximum allowable deduction of 7.5% of wages was used in the ensuing calculation. By agreement, the total allowable deductions for Mr. S. in 2005, consisting in his case of taxes, retirement, and union dues, were \$1,716.70 per month. These resulted in an adjusted annual income of \$59,653.89.

The annual child support amount, 20% of that figure, is \$11,930.78 per year. For November and December of 2005, the parties and CSSD agreed to child support of \$994 per month, which is the same support level translated to a monthly obligation and rounded to the nearest dollar.

B. Mr. S.'s 2006 Income

In 2006, Mr. S.'s base pay has risen slightly to 23.61 per hour, resulting in an "annual salary" (without overtime) of \$49,269.¹ His tax-free cost of living allowance will remain 25% for most of the year, dropping to 24% in August; a blended figure of 24.7% will be used for this calculation. The COLA is therefore \$12,169. A permanent fund dividend will be imputed at the same level as 2005. All together, the gross income would be \$62,284 without any overtime.

The only real dispute at the hearing was the amount of overtime to project for 2006. If the 2005 track record for overtime is used, Mr. S. would have 500 hours of overtime to add to his 2006 income. Overtime is paid at \$23.61 per hour, and then an "FSLA premium" of

¹ Exhibit 8.

approximately 60% is also paid, which appears to encompass any applicable COLA, since the regular COLA is listed on pay advice statements only for non-overtime and vacation hours.² This means that all overtime is compensated at a net rate of approximately \$37.78 per hour. Using 500 hours of overtime in connection with 2006 income would yield additional pay of \$18,888.

Mr. S. argued that his overtime would be much lower in 2006, pointing to a January 21, 2006 management announcement suggesting a substantial budget shortfall in his agency.³ At the hearing, he noted that his overtime had dropped to 4¾ hours in the pay period immediately following that announcement, and projected that it would remain at about 5 hours per bi-weekly pay period for the rest of the year. He had 7 hours and 12 hours of overtime in the first two pay periods of the year, which predated the announcement. By Mr. S.'s projection, 2006 overtime would be 19 hours (for the first two periods) plus 24 times 5 hours, for a total of 139 hours. At \$37.78 per hour, this translates to \$5,251.

After the hearing and during the period before the record closed, Mr. S. submitted a letter from the Alaska District Manager of the Social Security Administration, Paul Brandt.⁴ Mr. Brandt states that he approved a high level of overtime for Mr. S. in 2005 because the Anchorage office was completing special projects or workloads for other SSA facilities. In the current fiscal year, he reports that the overtime budget is reduced by approximately 70%, and he expects that level of funding to continue into federal fiscal year 2007, which begins in October. If Mr. S.'s overtime drops by 70% in accordance with this budget reduction, it will average about 6 hours per two-week pay period (500 divided by 26 times .30, rounded to nearest hour). In 2006, his overtime would be 19 hours (for the first two pay periods), plus 24 times 6 hours, for a total of 163 hours. At \$37.78 per hour, this translates to \$6,158.

For reasons discussed in the next section, the third overtime projection, using Brandt's budget figure, will be used in this case. Accordingly, I find Mr. S.'s likely 2006 income to be \$62,284 plus \$6,158, yielding a total of \$68,442.

² See, for example, Exhibit 3 and Exhibit 8. The FLSA premium varies slightly as a percentage of overtime compensation, for reasons that are unexplained in the record, but it always seems to be very close to 60%. It is difficult to be certain from the information given on the pay advice statements, but all of the FLSA premium appears to be taxable.

³ See Exhibit 7.

⁴ Exhibit 11.

Mr. S.'s maximum retirement deduction at this income level would be \$422.48 per month. His actual retirement deductions in 2006 appear to be above that level,⁵ and so the maximum will be used. Union dues are \$26.65 per month. Imputed federal income tax is \$714.64, and FICA is \$353.35. When these amounts are annualized and subtracted from gross income, the adjusted annual income is \$50,236.

III. Discussion

The support amount for November and December, 2005 was established by agreement. It will not be separately discussed here. The analysis below relates to the ongoing support amount beginning January 1, 2006.

When one parent has primary custody of the children, the other parent's child support obligation is "calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in [Civil Rule 90.3](a)(2)."⁶ By "adjusted annual income" the rule means "the parent's total income from all sources minus mandatory deductions ..." which include the taxes, union dues, and retirement contributions discussed in the preceding section.⁷ Child support for one child is calculated at 20% of the resulting figure.⁸

The only legal dispute in this case concerns the proper way to address overtime, which has been a substantial component of Mr. S.'s income. Ms. S. points out that most government programs use a retrospective approach to set a person's income. In her view, Mr. S.'s 2005 income should be used to establish the income base from which support is calculated in 2006.

Ms. S. is correct that this is a common way for government programs to operate. Child support is different. It is governed by a rule set up by the Alaska Supreme Court, Rule 90.3. In explaining what is meant by the "income" from which child support is calculated, the court says:

Child support is calculated as a certain percentage of the income which will be earned when the support is to be paid. This determination will necessarily be somewhat speculative because the relevant income figure is expected future

⁵ Exhibit 8. He has \$294.44 per pay period taken out for TSP, which he testified was a federal employee equivalent of a 410k account, and he has \$15.11 deducted for FERS. Converted to monthly amounts, these total \$670.69 per month.

⁶ See Alaska R. Civ. P. 90.3(a).

⁷ Alaska R. Civ. P. 90.3(a)(1).

⁸ Alaska R. Civ. P. 90.3(a)(2)(A).

income. The court must examine all available evidence to make the best possible calculation.⁹

In setting Mr. S.'s support for 2006 and beyond, therefore, it is necessary to arrive at the best estimate of what he will actually earn in 2006. His 2005 income and 2005 overtime component are part of the evidence that goes into that estimate, but they are not the final answer in themselves.

In this case, there is strong evidence that the budgetary situation at the Social Security Administration has changed fundamentally from 2005 to 2006. Mr. Brandt's letter gives the most reliable indication of the amount of overtime likely to be available this fiscal year and beyond. It is reasonable to project a 70% reduction in overtime in line with the reduction in the overtime budget. This results in projected overtime somewhat higher than Mr. S. himself projects, but is well short of the 2005 level.

Using Mr. Brandt's projection, I calculated above that Mr. S.'s adjusted annual income for child support purposes in 2006 will be \$50,236. Twenty percent of that amount is \$10,047, which works out to \$837 per month. A summary of this calculation is attached to this order.

IV. Conclusion

For the portion of this order that applies to 2005, the child support will be set at the agreed figure of \$994. For 2006 and the future, using the most reasonable projection of annual income results in a child support amount of \$837 per month.

V. Child Support Order

- W. L. S. support obligation is \$994 per month effective November 1, 2005 and ending December 31, 2005.
- W. L. S. support obligation is \$837 per month effective January 1, 2006, and ongoing.

DATED this 27th day of February, 2006.

By: Signed _____
Christopher Kennedy
Administrative Law Judge

⁹ Civil Rule 90.3 Commentary, Part III-E.

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 15th day of March, 2006.

By: Signed _____
Signature
Christopher Kennedy _____
Name
Administrative Law Judge _____
Title

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