

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

In the matter of:)

E. A. F.)

) OAH No. 06-0122 CSS
) CSSD NO. 001051555
)

DECISION AND ORDER

I. Introduction

E. F. appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 17, 2006, raising her monthly child support obligation by 202% from \$50 to \$151. The Obligee child is A., born 00/00/91. M. J. of Phenix City, Alabama has primary physical custody of A..

Ms. F. attended the formal hearing, held on February 23, 2006. A.J. Rawls, Child Support Specialist, appeared for CSSD. The hearing was recorded. After the hearing, the record remained open until March 2 to permit Ms. F. to report the outcome of her job search.

II. Overview

Ms. F. needs to contribute more to A.'s support. However, CSSD miscalculated Ms. F.'s support amount, using five quarters of income for one year and also adding the numbers wrong. The support amount needs to be recalculated.

Using the latest income information for Ms. F., the correct support amount is \$119 per month. Although there is financial hardship in Ms. F.'s life, it is no greater than that of A.'s household, and therefore this amount will not be reduced any further.

III. Facts

A. Background

A. lives with her father in Alabama, where he has been raising her alone for twelve of her fourteen years. Father and daughter live very simply in public housing. Mr. J. holds a steady job at Cessna Aircraft, but his income is limited to about \$1200 per month in take-home pay.

Ms. F.'s child support for A. had been set at the minimum level, \$50, for a number of years. She had several other children, and A.'s father did not press for a higher amount because he knew of her other responsibilities. However, with most of Ms. F.'s children grown and with A. in her teens, he decided in late 2005 to see if she could contribute more for A.

CSSD calculated a new support amount of \$151 per month based on income figures for Ms. F. that it obtained from the Department of Labor.¹ It based that result on an annual income of \$9915.63. This appears to have been reached by (1) adding up Ms. F.'s wages from the first, second, and third quarters of 2005, which it correctly totaled at \$7889.87; (2) adding unemployment benefits from the last quarter of 2004 and the last quarter of 2005, and then making a small calculation error so that the result is overstated by about \$70; and (3) adding a PFD.² It should be noted that the "year" on which annual income was based was 15 months long.

Ms. F. filed a timely appeal on February 2, 2006, noting that she was then unemployed, that she was raising an 8-year-old, and that the higher support would cause them hardship.³

B. Ms. F.'s Income

Ms. F. has a history of working in fairly low-paid hourly positions with periodic unemployment.⁴ Her most recent job before the hearing had been a seasonal position with the city that ended in October. However, she was actively looking for work and was hopeful that she would be hired in a new position within a few days. In a letter faxed to OAH on March 2, she reported that she has just started with Big Brothers/Big Sisters, four hours per day, five days per week, at \$7.15 per hour. This is in keeping with the kind of work she has been able to get in the past.

It is unlikely that this kind of part-time hourly position will come with paid holiday and sick time. Therefore, annual income will be calculated based on 240 workdays per year. The resulting annual income from work is \$6,864. In addition, Ms. F. receives a PFD.

C. Hardship

A. and her father and Ms. F. and her 8-year old son live at similar economic levels. In A.'s household, the \$1200 in monthly take-home pay is almost entirely consumed by rent, basic utilities, and transportation. There are no extravagant expenses. Mr. J. drives a 22-year-old car. He works full time.

¹ Ex. 6.
² See Ex. 4.
³ Ex. 5.
⁴ See Ex. 6.

Ms. F. and her son have less income, but they survive by living with Ms. F.'s mother. The household is able to keep a cell phone and cable TV, and to spend somewhat more on alcohol and tobacco than A.'s household. Ms. F. tends to work part-time, probably because of the need to care for her young son.

In both households, there is not much money for the children's needs. Both households have about \$10,000 in medical debts, which they are not able to pay.

IV. Discussion

A. Child Support Obligation Based on Projected Income

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)."⁵ By "adjusted annual income" the rule means "the parent's total income from all sources minus mandatory deductions ..." which include basic taxes, union dues, and retirement contributions.⁶ Child support for one child is calculated at 20% of the resulting figure.⁷

Because child support is calculated based on annual income, temporary periods of unemployment do not negate the support obligation. Also, child support may be based on the potential income of a person who is voluntarily and unreasonably unemployed or underemployed.⁸ On the other hand, it is important to bear in mind that child support is calculated based on "the income which will be earned when the support is to be paid"—that is, actual or potential *future* income.⁹

In this case, the best estimate of future income is based on Ms. F.'s present job. Adding her projected \$6,864 in earnings to a likely PFD of \$846 yields gross income of \$7710. CSSD's child support calculator program projects allowable deductions of \$560 for taxes and unemployment insurance, leaving adjusted annual income of \$7150.¹⁰ Twenty percent of this amount is \$1430 per year, which works out to \$119 per month.

⁵ See Alaska R. Civ. P. 90.3(a).

⁶ Alaska R. Civ. P. 90.3(a)(1).

⁷ Alaska R. Civ. P. 90.3(a)(2)(A).

⁸ Civil Rule 90.3 Commentary, Part III-C.

⁹ Civil Rule 90.3 Commentary, Part III-E.

¹⁰ A printout of the calculation is attached.

B. Variance Based on Manifest Injustice

A child support obligation may be varied from the standard calculation if unusual circumstances exist and those circumstances make application of the usual formula unjust.¹¹ The injustice must be demonstrated by clear and convincing evidence.¹²

In this case, CSSD persuasively points out that both households are stressed by low income. Making an extra \$69 in monthly support payments will be hard for Ms. F., but not receiving that money would have a direct impact on basic needs on A.'s household. Under the circumstances, it is not unjust to apply the regular formula for child support. Ms. F. does have a responsibility to help A. grow up, and \$119 is not an impossible contribution for her to make.

To avoid putting Ms. F. into a difficult arrears situation that she might not be able to climb out of, the new support amount will be made effective March 1, 2006, when her new job started. Support during her recent period of unemployment will stay at the \$50 level.

V. Conclusion

Ms. F.'s future support for A. will be set at \$119 per month. This is somewhat lower than the \$151 originally calculated by CSSD, but higher than the minimum support she used to pay.

VI. Child Support Order

- Ms. F.'s child support obligation for A. from November 1 through February 28, 2006 is \$50 per month.
- Ms. F.'s ongoing support obligation is \$119 per month effective March 1, 2006.

DATED this 6th day of March, 2006.

By: Signed _____
Christopher Kennedy
Administrative Law Judge

¹¹ Civil Rule 90.3 Commentary, Part IV-B.

¹² Alaska R. Civ. P. 90.3(c)(1).

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 _____ day of _____, 2006.

By: _____
Signature

Name

Title

(SEE ADOPTION OPTION NO. 3)

Non-Adoption Options

1. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, declines to adopt this Decision and Order, and instead orders under AS 44.64.060(e)(2) that the case be returned to the administrative law judge to

take additional evidence about _____;

make additional findings about _____;

conduct the following specific proceedings: _____.

DATED this _____ day of _____, 2006.

By: _____

Signature

Name

Title

2. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060 (e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows:

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 _____ day of _____, 2006.

By: _____

Signature

Name

Title

3. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

Adopt proposed action submitted by CSSD on March 14, 2006 – attached.

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 3rd day of April, 2006.

By: Signed
Signature
Tom Boutin
Name
Deputy Commissioner
Title

4. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

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 _____ day of _____, 2006.

By: _____
Signature

Name

Title

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

In the matter of:)

E. A. F.)

OAH No. 06-0122-CSS
Child Support Case No. 001051555

Proposed Action

CSSD files a proposed action requesting that the final decision maker return the case to the Administrative Law Judge to amend a factual finding. CSSD discovered an error in the documents this agency provided to the Administrative Law Judge. Judge Kennedy wrote in the third paragraph of section IIIA Facts that “CSSD calculated a new support amount of \$151 per month based on income figures for Ms. F. that it obtained from the Department of Labor. It based that result on an annual income of \$9915.63. This appears to have been reached by (1) adding up Ms. F.’s wages from the first, second, and third quarters of 2005, which it correctly totaled at \$7889.87; (2) adding unemployment benefits from the last quarter of 2004 and the last quarter of 2005, and then making a small calculation error so that the result is overstated by about \$70; and (3) adding a PFD. It should be noted that the “year” on which annual income was based was 15 months long”.

The income CSSD’s caseworker used was from 1st, 2nd and 3rd quarters of information reported to the Alaska Department of Labor and Workforce Development for 2005 for a total of \$7,889.87. The caseworker also used Unemployment Insurance Benefits reported by the Alaska Department of Labor and Workforce Development for October 29, 2005 through December 31, 2005 for a total of \$1,180.00 and the Alaska Permanent Fund Dividend amount of \$845.76 for a total Gross income of \$9,915.63.

There appears to be an error in the information CSSD provided to Judge Kennedy. CSSD submitted a copy of a State of Alaska CSED/NSTAR Estab/ELMO/Income Summary (HE1S) screen during the formal hearing. The information that appears in that document is different from the information that appears in the Alaska Department of Labor and Workforce Development database.

CSSD agrees that Judge Kennedy's assessment the case parties financial and custodial situations is correct and CSSD agrees with the child support amount ordered. CSSD requests the third paragraph of section IIIA Facts be amended. CSSD requests the Administrative Law Judge use the language in the second paragraph of this document.

March 14, 2006

Signed _____
Andrew Rawls
Child Support Specialist

This is to certify that a copy
of this filing was mailed to:

E. A. F.

M. E. J.

DOA, Office of Administrative Hearings (Anchorage)

March 14, 2006

Signed _____
Andrew Rawls
Child Support Specialist

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

In the matter of:)
)
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E. A. F.)

OAH No. 06-0122-CSS
Child Support Case No. 001051555

Affidavit of Andrew Rawls

STATE OF ALASKA)
THIRD JUDICIAL DISTRICT) ss.

Andrew Rawls, being duly sworn deposes and states that:

I am employed by the Child Support Services Division in the capacity of Child Support Specialist. I viewed Ms. F.'s Alaska Department of Labor Tax Wage Inquiry by SSN screen and that screen shows the following for 2005:

Year	Qtr	Name	Wage
2005	4	MUNICIPALITY OF ANCH PAYROLL	1318.39
2005	3	MUNICIPALITY OF ANCH PAYROLL	2216.36
2005	3	ARC OF ANCHORAGE THE	1222.56
2005	2	ARC OF ANCHORAGE THE	3001.25
2005	1	RGIS INVENTORY SPECIALISTS	201.70
2005	1	ARC OF ANCHORAGE THE	1248.00
Total			\$9,208.26

I viewed Ms. F.'s Alaska Department of Labor Weekly Disbursements screen and that screen shows the following for 2005:

Benefit	Paid	Payment
Week End	To	Amount(\$)
12-31-2005	W/H-CSEA	8.26
12-31-2005	Client	109.74
12-24-2005	W/H-CSEA	8.26
12-24-2005	Client	109.74
12-17-2005	W/H-CSEA	8.26
12-17-2005	Client	109.74

12-10-2005	W/H-CSEA	8.26
12-10-2005	Client	109.74
12-03-2005	W/H-CSEA	8.26
12-03-2005	Client	109.74
11-26-2005	W/H-CSEA	8.26
11-26-2005	Client	109.74
11-19-2005	W/H-CSEA	8.26
11-19-2005	Client	109.74
11-12-2005	W/H-CSEA	8.26
11-12-2005	Client	109.74
11-05-2005	W/H-CSEA	8.26
11-05-2005	Client	109.74
10-29-2005	W/H-CSEA	8.26
10-29-2005	Client	109.74
Total		\$1,180.00

March 14, 2006

Signed

 Andrew Rawls
 Child Support Specialist

Subscribed and sworn to before me this 14th day of March, 2006

Signed

 Notary Public in and for Alaska
 My commission expires: 8/9/07

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