

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

IN THE MATTER OF:)

R. W. J.)

) OAH No. 06-0159-CSS

) CSSD No. 001112545

DECISION AND ORDER

I. Introduction

This matter involves the Custodian S. R. K.'s appeal of a revised Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. J.'s case on January 18, 2006. The Obligee child is A., DOB 00/00/99.

The formal hearing was held on March 10, 2006. Ms. K. appeared by telephone; Mr. J. did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on July 1, 2006.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, I have concluded Ms. K.'s appeal should be denied and CSSD's revised Administrative Child and Medical Support Order should be affirmed.

II. Facts

A. History

CSSD issued the original Administrative Child Support and Medical Support Order in this case on June 6, 2002.¹ The order set Mr. J.'s ongoing child support at \$347.30 per month, with arrears of \$2233.80 for the period beginning October 2001. CSSD based the calculation on mean wages for a taxi driver, plus Mr. J.'s VA disability income.² There is no indication that either party appealed CSSD's order.

On April 19, 2005, Mr. J. filed a Motion to Vacate a Default Order.³ On January 18, 2006, CSSD granted the motion and issued a revised Administrative Child Support and Medical Support Order. The revised order set Mr. J.'s arrears at \$3094.29 for the period from October

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

2001 through September 2004.⁴ Ms. K. filed an appeal and requested a formal hearing on February 21, 2006.⁵

B. Material Facts

Mr. J. is a former member of the military and he is disabled. He has a combined disability rating of 30%, and receives a monthly entitlement that was \$324 per month as of December 2004.⁶

In 2001, Mr. J.'s total annual income was \$7439.72, which includes income from wages, the PFD, unemployment benefits, and VA disability benefits. This income figure results in a child support calculation of \$123 per month.⁷ In 2002, Mr. J.'s total annual income was \$4160.89, which results in a child support calculation of \$69 per month.⁸ Mr. J.'s total annual income in 2003 was \$5109.86, which results in a child support calculation of \$83 per month.⁹ Finally, Mr. J.'s 2004 income was \$3977.84, which results in a child support calculation of \$66 per month.¹⁰

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources."

When an obligor parent requests CSSD to conduct a default review of a child support case, he or she must provide the financial information necessary to determine the parent's child support obligation for each year at issue.¹² Alaska law allows CSSD to use a parent's "potential income" if a finding is made that the parent is voluntarily and unreasonably unemployed or underemployed.¹³

⁴ Exh. 7. On September 22, 2004, the Superior Court issued an order for Mr. J. to pay ongoing child support in the amount of \$240 per month. Exh. 6 at pg. 3.

⁵ Exh. 9.

⁶ Exh. 5 at pg. 26.

⁷ Exh. 8 at pg. 1.

⁸ Exh. 8 at pg. 2.

⁹ Exh. 8 at pg. 3.

¹⁰ Exh. 8 at pg. 4.

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² 15 AAC 125.121(b).

¹³ Civil Rule 90.3(a)(4).

The person who filed the appeal, in this case, Ms. K., has the burden of proving by a preponderance of the evidence that the agency's revised Administrative Child Support and Medical Support Order is incorrect.

When he filed the motion to vacate the default order, Mr. J. provided child support affidavits, IRS extracts and VA disability documents as evidence of his income.¹⁴ CSSD used those documents to calculate his support obligation for each year at issue, namely for the period from October 2001 through September 2004.

Ms. K. claims Mr. J. is voluntarily unemployed or underemployed. She maintains he worked "under the table" as a cab driver and that he even informed the court that he was making about \$1000 per month from his employment. CSSD was granted permission to send subpoenas for Mr. J.'s work records to the cab companies in Fairbanks. The three who responded did not return any useful information. Both Executive Taxi and King Cab indicated they do not have any records for Mr. J. because they only have to keep driver records for three years.¹⁵ Alaska Transportation, Unlimited, provided a copy of a driver's list for 2002-2003, but the company stated no one had heard of or from him since then.¹⁶ The company indicated Mr. J. probably was a casual driver, with no set schedule.

Having considered the evidence in this appeal, I find that Ms. K. did not meet her burden of proving by a preponderance of the evidence that CSSD's revised Administrative Child Support and Medical Support Order is incorrect. Even though Mr. J. was listed as a driver for one of the taxi companies that responded to CSSD's subpoena, the company representative indicated Mr. J. was likely only a casual driver. Since that is the only evidence of his possible employment as a cab driver for the entire three-year time at issue, I find it is not sufficient to find Mr. J. was voluntarily unemployed or underemployed during that time. Thus, CSSD's revised Administrative Child Support and Medical Support Order should be affirmed.

IV. Conclusion

Ms. K. did not meet her burden of proving CSSD's Administrative Child Support and Medical Support Order was incorrect.

¹⁴ Exh. 5.

¹⁵ Exhs. 11 & 12.

¹⁶ Exh. 13 at pgs. 1-2.

V. Child Support Order

- CSSD’s January 18, 2006, revised Administrative Child Support and Medical Support Order is affirmed.

DATED this 21st day of July, 2006.

By: Signed
Kay L. Howard
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 7th day of August, 2006.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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