

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

In the matter of:)	
)	OAH No. 06-0185 CSS
A. M. W.)	CSSD No. 001110117
_____)	

DECISION AND ORDER

I. Introduction

A. M. W. appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 23, 2006, raising his monthly child support obligation to \$584. The obligee children are S., born 00/00/98; E., born 00/00/00; A., born 00/00/01; A., born 00/00/03; and C., born 00/00/05. W. W. of Small Town has primary physical custody of the children.

Mr. W. participated by telephone in the formal hearing, held on March 22, 2006. A.J. Rawls, Child Support Specialist, appeared for CSSD. Ms. W. did not participate. The hearing was recorded. After the hearing, the record remained open until March 24 to permit Mr. Rawls to submit and extract the Department of Labor and Workforce Development data for Mr. W.

II. Facts

A. Background

Mr. W.'s child support has been set at \$55 per month since 2003. For part of this period, he and the custodian lived in the same household. It does not appear, however, that they will be living together in the future.

On November 21, 2005 CSSD initiated a modification proceeding to reevaluate the obligation in light of C.'s birth. Mr. W. did not respond to the agency's request for income information. Using data from the Department of Labor and Workforce Development, the agency calculated an annual income of \$21,022.45 and, using the support formula in Alaska Civil Rule 90.3, determined a support obligation for the five children of \$584 per month. The new support

amount became effective December 1, 2005. CSSD also assessed a charge of \$45 for the single month of November, 2005.¹

Mr. W. filed a timely appeal on February 22, 2006. As clarified during the hearing, there is only one issue on appeal: Mr. W.'s likely income during the period that support will be paid.

B. Mr. W.'s Income

Mr. W. is ordinarily a resident of Small Town, Alaska. Small Town, located on an island in Norton Sound, has a population of 427. The website of the Alaska Department of Commerce, Community, and Economic Development describes the village economy as follows:

The Small Town economy is based on subsistence food harvests supplemented by part-time wage earning. Most cash positions are found in city government, the IRA council and village corporation, schools, and local stores. Six residents hold commercial fishing permits, primarily for the herring fishery. The Stebbins/Small Town Reindeer Corral Project was completed in 1993 for a herd on Stuart Island. The reindeer are essentially unmanaged.

According to the same source, per capita income in Small Town is \$10,692, and the unemployment rate is 21.2% (comparable figures for Anchorage are \$25,287 and 6.8%). Mr. W. testified that employment opportunities in Small Town are best in summer.

In 2005, Mr. W. was able to get seasonal work in Small Town on an Alaska Native Tribal Health Consortium (ANTHC) sanitation project. He worked from March to September, earning \$17,713.69. The project ended in September. He had no other work for the rest of the year. He gets no permanent fund dividend. His only additional income in 2005 was unemployment benefits in the amount of \$2463.00.

In the past, Mr. W. has sometimes been able to get part-time winter work as a reindeer herder. He has not had that kind of work in the last two winters. His employment history shows a series of short-term jobs or project-specific jobs with local entities. His average annual income over the three years preceding 2005, including both wages and unemployment benefits, was \$7115.51.²

At the time of his appeal and at the time of the hearing, Mr. W. was incarcerated. He participated in the hearing from a halfway house, from which he anticipated he would be released in a few days. Upon release, he might be required to delay his return to Small Town to

¹ Ex. 3, pp. 4, 11.

² Ex. 5.

participate in alcohol assessment or treatment. It is his goal to return to Small Town, where his children live, when he is able.

Mr. W.'s employment prospects when he returns to Small Town are limited. The ANTHC project has revived because the pipes froze during the winter. The work has already begun. Its duration is uncertain. Mr. W. believes he can probably be hired back to the project, but due to a residency requirement he will have to wait 30 days after his return to the village before he can be employed.

In all, Mr. W.'s income prospects in 2006 appear less promising than in 2005 and more in line with his 2002-2004 average. A reasonable projection would be that he may get three months of work with ANTHC, half of what he had in 2005. Other income or unemployment benefits may add about \$2500 to this, as occurred in 2005. The 2006 income would then be \$8857 from the ANTHC project and \$2500 from other sources, yielding \$11,357 in total. Although it is only a very rough projection and could be too high or too low, I adopt this figure as his most likely income level during the period support will be paid.

There is no evidence that Mr. W. is voluntarily and unreasonably unemployed. Instead, Small Town appears to offer him only the opportunity for intermittent employment.

III. Discussion

A. December 2005 and Ongoing

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)."³ 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.⁴ Child support for five children is calculated at 39% of the resulting figure.⁵

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

³ See Alaska R. Civ. P. 90.3(a).

⁴ Alaska R. Civ. P. 90.3(a)(1).

⁵ Alaska R. Civ. P. 90.3(a)(2)(D).

underemployed.⁶ 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.⁷

In this case, the best estimate of future income is the projection of \$11,357 explained above.⁸ This figure is actually fairly ambitious for Mr. W., as it exceeds his income in three of the last four years. However, the renewed work on the water and sewer project makes it achievable.

CSSD’s child support calculator program projects allowable deductions of \$93.26 per month for taxes and unemployment insurance, leaving adjusted annual income of \$10,237.88.⁹ Thirty-nine percent of this amount is \$3992.77 per year, which works out to \$333 per month.

Although the support figure will probably exceed Mr. W.’s ability to pay during the winter months, the necessary circumstances are not present to permit a seasonal variation in the support amount under Rule 90.3(c)(5). If Mr. W. falls into arrears during the winter months, he will have to use his higher summer income to catch up with his obligation.

B. November 2005

CSSD apparently provided ATAP for the month of November, 2005. Because there were five children rather than four, and the November support amount had covered only four children, CSSD needed to charge Mr. W. the difference in support between the amount for five children and the amount for four for that single month.¹⁰ This is done by applying the three percent increment for an additional child to the adjusted annual income for the period during which the arrears are being charged.¹¹

Ordinarily, it might be necessary to revisit this calculation since a new income basis for support has been calculated in this order. However, in this case CSSD used actual 2005 income to make the calculation. Although this order finds that 2005 income is not the appropriate basis for calculating support *going forward*, it was the correct basis for calculating the arrears increment. The applicable regulation requires that the increment be calculated using “the

⁶ Civil Rule 90.3 Commentary, Part III-C.

⁷ Civil Rule 90.3 Commentary, Part III-E.

⁸ For purposes of the estimate, the \$2500 in additional income beyond the sanitation project has been allocated as \$1000 in wages and \$1500 in unemployment benefits.

⁹ A printout of the calculation is attached as Attachment A.

¹⁰ 15 AAC 125.340(e)(1).

¹¹ *Id.*

noncustodial parent's actual annual adjusted income for the periods for which arrears are established."¹² Accordingly, the charge of \$45 for additional arrears will not be adjusted.

IV. Conclusion

Mr. W.'s support for his five children will be set at \$333 per month.

V. Child Support Order

- Mr. W.'s "additional arrears" for assistance paid or past due support for C. for the month of November 2005 is \$45.
- Mr. W.'s ongoing support obligation is \$333 per month effective December 1, 2005.

DATED this 30th day of March, 2006.

By: Signed
Christopher Kennedy
Administrative Law Judge

¹² *Id.*

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 13th day of April, 2006.

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

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