

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

IN THE MATTER OF)
)
 S. T.)
)
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Case No. OAH-06-0402-CSS
CSSD Case No. 001128844

DECISION & ORDER

I. Introduction

The custodian, J. P., appeals an order vacating an administrative child support and medical support order issued by the Child Support Services Division (CSSD) on May 15, 2006. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on June 26, 2006. Ms. P. appeared by telephone. The obligor, Mr. T., did not appear. Andrew Rawls represented CSSD. The child is C. T. (DOB xx/xx/00). The administrative law judge affirms CSSD's order.

II. Facts

CSSD vacated a default order on May 11, 2006, and issued a replacement Administrative Child Support and Medical Support Order on May 15, 2006.

CSSD stated that, according to Department of Labor records, Mr. T. last worked in 1996, when he was dismissed for misconduct. Ms. P. testified that when she met Mr. T. in 1999, he was unemployed and living on his parent's property on Hatcher Pass. To the best of Ms. P.'s knowledge, Mr. T. has not worked since then. Ms. P. testified that Mr. T. is 49 years old and living with his parents. She stated that his parents are in their seventies, and taking care of Mr. T. presents them with a heavy burden. Ms. P.s stated that because of medical problems including back problems, mental health issues, and other problems, Mr. T. is not capable of working. She stated that he has taken medication in the past that has severely affected his state of mind. Ms. P. stated that Mr. T. has no medical insurance, and that for that reason it is difficult for him produce any records of his various disabilities. According to Ms. P., Mr. T. has attempted to qualify for SSI, but has not succeeded. She stated that he has worked with the Division of Vocational Rehabilitation, but has not been able to complete a program.

Ms. P. testified that she has no expectation of receiving child support from Mr. T., because it is simply unreasonable to expect him to be able to work. She testified that he has been

involved in C.'s life and has done his best to be a good father and to help as much as he could. She stated that Mr. T. used to visit C. daily, but the frequency of his visits has been reduced after CSSD took action against Mr. T.'s driver's license.

III. Discussion

There are no legal issues in dispute in this matter. The case involves a single question of fact, whether Mr. T. is unable to earn a living, or whether he is able to work a minimum wage job but is voluntarily and unreasonably unemployed. There is very little evidence on which to base this decision. If there were medical records available, or a doctor's statement, it would be an easier case. Ms. P. candidly states herself that she is not a medical expert and cannot offer detailed information regarding Mr. T.'s condition. Nevertheless, I find Ms. P.'s testimony to be the most reliable evidence available.

CSSD has little or no actual information available as to Mr. T.'s ability to work. This lack of information has hampered the division's ability to reach a correct support amount. CSSD's position that Mr. T. is unreasonably and involuntarily unemployed is based on a presumption that most people are able to work, and the fact that Mr. T. has not provided any evidence to rebut that presumption.

Ms. P., while not a medical expert, has known Mr. T. very well for a number of years. She has no motivation to misrepresent Mr. T.'s condition; to the contrary, as the custodian, one might expect her to argue for a higher level of child support. Ms. P. was a credible witness. While she could not detail Mr. T.'s condition with medical knowledge, she has enough experience to form a useful opinion as to whether Mr. T. is actually able or unable to work. As C.'s custodial mother, Ms. P.'s opinion that it is detrimental to C. for Mr. T. to have a heavy child support debt should not be taken lightly.

IV. Conclusion

The best evidence available shows it is more likely than not that Mr. T. is disabled and unable to work. Support should be set at the minimal allowable amount of \$50 per month.

V. Order

IT IS HEREBY ORDERED that Mr. T.'s monthly child support obligation for one child be set at \$50 per month, effective April 1, 2006. Arrears are set at \$50 per month for the period from January 1, 2004, through March, 2006.

DATED this 28th day of September, 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 12th day of October, 2006.

By: Signed
Signature
Dale A. Whitney
Name
Administrative Law Judge
Title

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