

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

IN THE MATTER OF )  
 )  
 A. T. )  
 )  
\_\_\_\_\_ )

Case No. OAH-06-0418-CSS  
CSSD Case No. 001121251

**DECISION & ORDER**

**I. Introduction**

The obligor, A. T., appeals a decision of the Child Support Services Division (CSSD) made on May 17, 2006, to deny a petition to modify a child support and medical support order. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on August 16, 2006. Mr. T. appeared by telephone with his attorney, Kevin D. Koch. The custodian, K. F., also appeared by telephone. Andrew Rawls represented CSSD. The children are H. T. (DOB xx/xx/99) and T. T. (DOB xx/xx/01). The administrative law judge issues a support order adopting revised calculations and setting support at \$356 per month for two children.

**II. Facts**

In the mid-1990s, Mr. T. worked as a plumber's apprentice on the North Slope. With about 8000 hours completed, Mr. T. was close to completing his apprenticeship. Before becoming a journeyman, Mr. T. decided that plumbing was no fun and that didn't like raw sewage, and he therefore abandoned that lucrative occupation in 1997. Since then, Mr. T. has worked odd jobs and lived what he describes as a "homestead lifestyle." From 1997 until some time in 2001 Mr. T. and Ms. F. lived together, with financial support coming primarily from Ms. F.'s employment, PFDs, and the generosity of family, friends, and church. Mr. T. now works as a seasonal processor at a seafood plant.

Mr. T. argues that he has health problems that make it difficult or impossible to do many kinds of work. He states that just standing at the sink washing dishes causes him severe pain. However, he finds it no problem to work a full day on a salmon processing line, a job that consists mostly of "handing fish to the next guy," for up to 16 or 18 hours per day at the peak of the season. With the help of his son and some friends, Mr. T. manages to put up twelve to fourteen cords of wood per year to heat his house and hot water. Mr. T. asserts that he cannot

work during the winter months, because he is required to be home all day long putting wood on his fire to keep his house warm. Mr. T. does occasional snowplowing and lawn-mowing to supplement his income. Mr. T. provided a number of medical records, none of which document any treatment within the last ten years.

From the beginning of March through October Mr. T. averages about 40 hours per week working at S. H. Seafoods. During this period, CSSD calculates that Mr. T. earns \$11,520.13; for the period from November through February, CSSD calculates that Mr. T. will earn \$1,908.00 in unemployment benefits.<sup>1</sup> Using these figures plus a PFD and \$200 in earnings from lawn-mowing work, CSSD has calculated Mr. T.'s gross annual income to be \$14,473.89, which results in a child support obligation of \$291 per month for two children.<sup>2</sup>

Mr. T.'s current support amount is \$939 per month for two children. This case arose when CSSD denied Mr. T.'s request for modification. CSSD denied the request because Mr. T. had not submitted all the information that CSSD had requested. After the hearing, CSSD proposed the above amount of \$291 per month for two children. Ms. F. testified that she felt support in excess of \$900 per month was unreasonably high, and more than Mr. T. could afford. But she also stated that in her opinion Mr. T. is not disabled and capable of obtaining and completing outside work in addition to his work for S. H.

### **III. Discussion**

Child support is calculated as a percentage of the obligor's total income from all sources.<sup>3</sup> If the obligor is voluntarily and unreasonably unemployed or underemployed, support may be based on the obligor's potential income.<sup>4</sup>

Although Mr. T.'s job at S. H. Seafoods is seasonal, there does not appear to be a genuine reason that Mr. T. could not work during the winter months. Mr. T.'s principal reason for not working in the winter is that he finds it necessary to keep a fire burning in his stove during the winter. Mr. T. lives on the road system and has electricity to his house. It may be true that plugging in an electric or oil heater for his house and hot water while he is at work would be inconsistent with the "homestead lifestyle" that Mr. T. chooses to enjoy. Mr. T. is free to engage in any lifestyle he chooses, but he is not entitled to a corresponding reduction in his obligation to support his children. Mr. T.'s assertion that he cannot work because of a disability was not

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<sup>1</sup> Exhibit 7.

<sup>2</sup> *Id.*

<sup>3</sup> Civil Rule 90.3(a).

<sup>4</sup> Civil Rule 90.3(a)(4).

particularly credible. The medical records he provided are not recent, and he testified that it is not difficult for him to work as a fish processor or to gather wood.

Minimum wage in Alaska is \$7.15 per hour. If Mr. T. worked forty hours per week at a minimum wage job, he would earn \$1239.33 per month. During the summer, he earns \$1440 per month from S. H. Seafoods. Despite a seasonal economy, it is more likely than not that Mr. T. could easily earn as much in the winter as in the summer. He has useful skills, with experience in plumbing, snowplowing, and wood providing. It is more likely than not that Mr. T. could easily earn at least \$1440 per month year round, possibly more. \$1440 per month adds up to \$17,280 per year. With PFD income of \$1107, Mr. T. would have gross annual income of \$18,387, which results in a child support obligation of \$356 per month for two children.<sup>5</sup>

#### **IV. Conclusion**

To the extent that he earns less than \$18,125.76 per year, Mr. T. is voluntarily and unreasonably underemployed. His support obligation should be set at \$356 per month for two children.

#### **V. Order**

IT IS HEREBY ORDERED that Mr. T.'s child support obligation be set at \$356 per month for two children, effective February 1, 2006.

DATED this 4th day of October, 2006.

By: *Signed* \_\_\_\_\_  
DALE WHITNEY  
Administrative Law Judge

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<sup>5</sup> This calculation was made using the division's online child support calculator at <https://webapp.state.ak.us/cssd/guidelinecalc.jsp>. The calculator includes default amounts for allowable deductions for income tax, FICA, and unemployment insurance. In this calculation, the 2006 PFD amount of \$1106.97 was rounded up to \$1107 and entered in place of the calculator's projected 2006 PFD amount of \$845.76.

## 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 20th 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.]