

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

IN THE MATTER OF)
)
 M. H.)
)
 _____)

Case No. OAH-06-0534-CSS
CSSD Case No. 001138987

DECISION & ORDER

I. Introduction

The custodian, A. D., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on July 13, 2006. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on September 1, 2006. Ms. D. appeared by telephone, as did the obligor, M. H.. David Peltier represented CSSD. The child is V. D. (DOB XX/XX/92). The administrative law judge issues a support order adopting revised calculations proposed by CSSD.

II. Facts

In the previous order, Mr. H.'s support obligation had been set at \$555 per month for one child. When Mr. H. requested a modification, CSSD reduced the support amount to \$229 per month, effective April 1, 2006. CSSD arrived at this amount by determining that Mr. H. was voluntarily and unreasonably underemployed, and imputing a full-time minimum wage income.

At the hearing, Mr. described his employment situations during 2005 and 2006. At various times, Mr. H. has alternated between two jobs, one at B. B. and one at B.'s C.. Mr. H. earned \$10.50 and \$11.00 per hour respectively from these jobs. His hours fluctuated. At times he was simultaneously working full-time at both jobs, and at other times his hours would be significantly reduced. At some times Mr. H.'s working ability was hampered by the fact that he had been released from prison with an ankle monitor. Shortly before the hearing Mr. H. was incarcerated, and it is unlikely that he will be earning any significant income in the near future. CSSD reported that, according to the Department of Labor, Mr. H. earned \$4300 during the first two quarters of 2006.

III. Discussion

Child support is calculated as a percentage of the obligor's annual income, after making adjustments for items such as taxes and unemployment insurance. Variations from this standard

formula may be made when necessary to prevent injustice. If a person is voluntarily and unreasonably unemployed or underemployed, income may be imputed in accordance with the obligor's earning ability. The Supreme Court has held that a person who is incarcerated is not voluntarily under- or unemployed.

Although support should generally be calculated based on a single annual income figure, CSSD advocates variation from the standard method in this case because of the unusual circumstances. Because Mr. was working or could have been working through most of August, 2006, CSSD argues that an annualized income figure should be determined based on the available data for the first two quarters of 2006, and that a monthly support amount should be set based on that annualized figure; support would then be reduced to \$50 per month, the minimum amount, for September 2006 and on.

When one calculates the total amount of child support that Mr. H. would pay for the period from April, 2006, through the rest of the year, CSSD's recommended approach totals \$855 for the nine month period in 2006 covered by the modified order, whereas the standard approach totals \$594 for the same period, a difference of \$266. CSSD's proposed method is illustrated below:

Annualized 2006 income based on 1 st & 2 nd qtrs. (\$4300 x 2):	\$8600
Resulting monthly support for one child, without PFD income:	\$131
Support for April – August, 2006 (5 x \$131):	\$655
Support for September – December, 2006 (4 x \$50):	\$200
Total support for April – December, 2006:	\$855

The standard approach for calculating income would be to take Mr. H.'s income for the entire year of 2006, determine a monthly support amount for the entire year, and apply that to the period after the modification became effective, i.e. April through December of 2006. Since Mr. H. earned \$4300 in the first six months of 2006, his monthly income was \$716.66. He was working, or capable of working for eight months, through August, after which time he was incarcerated. Thus, Mr. H. earned, or could have earned \$5733.33 (8 x \$716.66). This annual income results in a monthly support obligation of \$88. Over the nine months from April through December of 2006, Mr. H. would pay a total of \$792, a difference of \$63 over the course of the year.

In this case, the periods before and after the beginning of Mr. H.'s most recent incarceration represent two distinct periods in which Mr. H. had very different earning

capacities. Unless a further modification or a prospective change in support was ordered at this time, Mr. H. would enter 2007 with a support obligation higher than the minimum, which would be the correct amount. The administrative convenience of CSSD's recommended approach and the negligible difference in what Mr. H. would ultimately be required to pay for the entire year favor CSSD's approach. Under the circumstances of this case, unusual circumstances warrant a variation of the support amount from the standard method of calculating support.

IV. Conclusion

Mr. H.'s support obligation should be set at the following monthly amounts for one child:

April – August, 2006:	\$131
August – ongoing:	\$50

V. Order

IT IS HEREBY ORDERED that Mr. H.'s support obligation be set at the following monthly amounts for one child:

April – August, 2006:	\$131
August – ongoing:	\$50

DATED this 11th day of October, 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 24th day of October, 2006.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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