

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

IN THE MATTER OF)	OAH No. 06-0578-CSS
W. N. H.)	CSSD No. 001141672
)	
_____)	

DECISION AND ORDER

I. Introduction

On August 31, 2006, a formal hearing was held to consider the child support obligation of W. N. H. (Obligor) for the support of his child, S. (Obligee).¹ The child’s mother, C. B., participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on September 14, 2006.

This case is Mr. H.’s appeal of the Division’s administrative order establishing his child support obligation for S. Having reviewed the record in this case and after due deliberation, I concluded that the monthly child support amounts established in the Division’s Amended Administrative Child and Medical Support Order should be adjusted to reflect that Mr. H. is not entitled to receive a permanent fund dividend. The child support should be set at \$626 per month for ongoing support and arrears based on his income including his employer provided benefits. Mr. B. did not show that setting his support based on his income would work an injustice.

II. Facts

Ms. B. applied for public assistance for her child, S., in February of 2006. Paternity is not in dispute. Mr. H. is named as S.’s father on her birth certificate. The Division served Mr. H. with an Administrative Child and Medical Support Order on June 7, 2006. Mr. H. requested an administrative review.

The Division issued an Amended Administrative Child and Medical Support Order on July 18, 2006. Mr. H. requested a formal hearing.

Prior to the hearing, the Division provided new calculations based on updated income

¹ The hearing was held under Alaska Statute 25.27.170.

information. After the hearing, the record was held open to provide Mr. H. with an opportunity to provide additional documentation to support his position that his child support should be reduced to avoid a hardship for his household.²

Based on the evidence in the record, I find that the Division correctly calculated Mr. H.'s child support obligation based on his 2006 income at Exhibit. 13. These calculations result in a monthly child support obligation of \$626. I also find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3(c), there is not clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3(a) is not lowered.³

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. H., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁴

When establishing pre-order arrears in a case where there was public assistance, the Division goes back only to the month that the application for public assistance was filed. In this case, that month is February 2006.⁵

There is no real dispute that income that the Division used to calculate Mr. H.'s 2006 child support arrears and ongoing child support at \$626 was correct.⁶ Mr. H. only met his burden in showing that he will probably not receive a PFD, which was not included in this latest calculation. Mr. H. did not challenge the accuracy of the amounts used in this calculation. He admitted that his employer provided housing is worth the amount the Division included as income for this benefit.⁷

Mr. H. argued that it was unfair to include the value of his employer provided housing as income to calculate his support. Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."⁸ Civil Rule 90.3

² Recording of Hearing.

³ Recording of Hearing & Mr. H.'s financial information including the information provided with his cover letter dated 8th September 2006.

⁴ Alaska Regulation 15 AAC 05.030(h).

⁵ Alaska Regulation 15 AAC 125.105(a).

⁶ Recording of Hearing & Ex.12, page 1.

⁷ Recording of Hearing.

⁸ Alaska Civil Rule 90.3(a)(1)

Commentary III.A. *Defining Income*, states that the first step in determination of child support is calculating a "parent's total income from all sources."⁹ This phrase should be interpreted broadly to include benefits which would have been available for support if the family had remained intact.¹⁰ Income includes, but is not limited to Armed Service Members base pay plus the obligor's allowances for quarters, rations, COLA and specialty pay.¹¹

A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹² Good cause includes a finding of unusual circumstances.¹³

At the hearing, and after the hearing, Mr. H. provided detailed information concerning his household's finances. Mr. H. had a new child on the way at the time of the hearing. This younger child will be the only other child he helps to support. Mr. H. does not want his current wife to have to work. Ms. B. is a single parent. Mr. H. earns a good income. He has been able to make \$227 per month in voluntary contributions to his retirement and this amount has been deducted from his monthly income in calculating his child support for S. It will not work an injustice to make him pay the standard portion of his income for child support. His income will be stretched to cover his household expenses, but he does not have any unusual expenses.¹⁴ Mr. H. is only being asked to pay his share of the cost of S.'s support. Under Alaska Law, Mr. H.'s pre-existing duty to pay the correct percentage of his income toward the ongoing support of his oldest child, S., takes precedence over his debts and other financial obligations, including his obligation to his younger child.¹⁵ Mr. H. did not show that it would be unjust to require him to pay \$626 per month for her child support.¹⁶ Under Alaska Civil Rule 90.3(a) & (c), Mr. H. has an obligation to pay 20% of his adjusted gross income in child support to S.

IV. Conclusion

Mr. H. did not provide clear and convincing evidence that manifest injustice will result if

⁹ Rule 90.3(a)(1).

¹⁰ Civil Rule 90.3 Commentary III.A.

¹¹ Civil Rule 90.3 Commentary III.A.29.

¹² Alaska Civil Rule 90.3(c).

¹³ Civil Rule 90.3(c)(1)(A).

¹⁴ Recording of Hearing.

¹⁵ Alaska Civil Rule 90.3 Commentary VI.B.5. & Alaska Civil Rule 90.3 Commentary VI.B.2.

¹⁶ Recording of Hearing & Mr. H.'s financial information including the information provided with his cover letter dated 8th September 2006.

the child support amounts calculated under Civil Rule 90.3(a) are not decreased.

CHILD SUPPORT ORDER

1. Mr. H.'s ongoing child support for S. is set at \$626 per month effective March 1, 2007.
2. Mr. H. is liable for child support arrears for S. under this order in the monthly amount of \$626 only for the months of February 2006 through February 2007.

DATED this 20th day of February, 2007.

By: Signed_____

Mark T. Handley

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 Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 14th day of March, 2007.

By: Signed
Jerry Burnett
Director, Administrative Services

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