

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

IN THE MATTER OF )  
 )  
 E. J. )  
 )  
 \_\_\_\_\_ )

Case No. OAH-06-0669-CSS  
CSSD Case No. 001031877

**DECISION & ORDER**

**I. Introduction**

The obligor, E. J., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on August 30, 2006. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on October 16, 2006. Mr. J. appeared by telephone. Andrew Rawls represented CSSD by telephone. The custodian, J. C. (fna J. C.) did not appear. The child is J. C. (DOB 00/00/90). The administrative law judge affirms the modified order.

**II. Facts**

This case began when Ms. C. signed and returned an electronically generated review request. The previous support amount was \$50 per month, set in June, 1994. In the modified order, CSSD increased support to \$358 per month.

Mr. J. has been and continues to be in a struggle with alcoholism. Though he now appears to have gained the upper hand in this battle, it has affected his earnings for 2006. During 2005, Mr. J. worked for Store A in Soldotna for \$12.00 per hour. Based on this hourly figure, CSSD estimated Mr. J.'s annual income to be \$25,805.76. Mr. J. agrees that this amount is approximately what he earned in 2005. At the end of 2005 he was convicted of driving while intoxicated and was required to serve 120 days in jail. As a result, Mr. J. lost his job and his driver's license. He was released on January 25, 2006, but was unable to find employment because he could not drive. He was arrested again in March, 2006, and served another 20 days, and upon his release Mr. J. went fishing. After earning about \$5,000 from fishing, Mr. J. went into a treatment program. Mr. J. was in treatment and unemployed when he filed his appeal request, but about a week later he was hired again by Store A on September 12, 2006, earning \$12.00 per hour and working approximately 40 hours per week.

At the hearing, Mr. J. testified about his current financial situation and expenses. His testimony did not reflect unusually high expenses. Mr. J. and his girlfriend pay \$600 per month in rent, with no unusually high utility expenses. His girlfriend works 30-35 hours per week and earns \$7.15 per hour. Mr. J. does not have any credit card, medical, or other consumer debt. Having lost his license, he does not own a car, and therefore has no vehicle or insurance expenses.

### **III. Discussion**

Child support is calculated as a percentage of the obligor parent's total income from all sources, after adjustments are made for expenses such as tax, retirement contributions, and union dues.<sup>1</sup> For one child, the support amount is 20 percent of adjusted annual income. This amount may be varied when necessary to prevent manifest injustice.<sup>2</sup>

Mr. J.'s success in obtaining employment shortly after filing his appeal goes a long way toward addressing the concerns he raised. It is likely that Mr. J.'s income in 2007 will approximate his 2005 earnings, and there is no serious dispute that \$358 will be a proper amount for 2007 and ongoing.

There is a legitimate argument that for the portion of 2006 covered by the modified order, Mr. J.'s support obligation should be based on his actual earnings, which will be only the \$5000 he earned fishing and the amount he will earn from Store A for the period from September 12, 2006, through December 31, 2006. If he earns \$480 per week (\$12 x 40 hours) and there are fourteen weeks from the middle of September until the end of December, Mr. J. will earn \$6720 from Store A in 2006. With a PFD and the fishing income, his total earnings for 2006 will be \$12,827, which results in a child support obligation of \$206 per month for one child in 2006.

While it may initially appear to be a correct application of Civil Rule 90.3, adopting a support amount of \$206 for the balance of this year would produce an unjust result. Using actual income for the entire year only produces a fair result if the support amount of \$206 is applied for the entire year. For the first half of the year, when Mr. J. was unemployed, he paid only \$50 per month, the minimum amount. It would be unfair for Mr. J. to pay a reduced amount for the second half of the year, when he is earning substantially more than he did in the first half. Also, Mr. J. has paid the minimum support amount for the child's entire life, even though at some times he has been earning a fairly good income, enough in 2005 to merit a support amount of

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<sup>1</sup> Civil Rule 90.3(a).

<sup>2</sup> Civil Rule 90.3(c).

\$358 per month. At this point there are only seventeen months of childhood left before this child becomes an adult.<sup>3</sup> As Mr. J. stated at the beginning of the hearing, his situation has changed since he first requested a hearing. The evidence does not show that CSSD's proposed support amount would create a substantial hardship. While money may be a little tight as Mr. J. gets his life reorganized in the wake of his treatment program, his daughter is entitled to have a fair amount of support for what is left of her minority.

In his appeal, Mr. J. wrote that "also I was wanting to know [if] J. can get child support even tho she is married to another man." In Alaska, parents are obligated to support their children.<sup>4</sup> Each parent's duty to support a child is unaffected by the status of the other parent. While the custodial parent is the administrator of child support funds, the right to child support belongs to the child, not to the other parent. J. is entitled to be supported by her father regardless of her mother's marital status.

#### **IV. Conclusion**

CSSD has correctly calculated Mr. J.'s support obligation to be \$358 per month. The modified order should be affirmed.

#### **V. Order**

IT IS HEREBY ORDERED that the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on August 30, 2006 be AFFIRMED.

DATED this 20<sup>th</sup> day of October, 2006.

By: Signed  
DALE WHITNEY  
Administrative Law Judge

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<sup>3</sup> J. was born 00/00/90, and she will emancipate on 00/00/08. The period that Mr. J. will be liable for support could be slightly longer if J. is still in high school and living at home when she turns 18, but the support obligation will not go beyond the time she graduates or turns 19, whichever comes first.

<sup>4</sup> AS 25.20.030.

## 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 3<sup>rd</sup> day of November, 2006.

By: Signed  
Dale Whitney  
Administrative Law Judge

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