

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

IN THE MATTER OF)	
)	
S. T.)	
)	Case No. OAH-06-0691-CSS
_____)	CSSD Case No. 00114071

DECISION & ORDER

I. Introduction

The obligor, S. T., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on September 6, 2006. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on October 31, 2006. Mr. T. appeared by telephone, as did the custodian of record, R. T. Andrew Rawls represented CSSD. The child is A. T. (DOB 00/00/05). The administrative law judge issues a support order adopting revised calculations proposed by CSSD.

II. Facts

The facts in this case are not in dispute. The period covered by this order begins on October 1, 2005. At that time, Ms. T. had custody of A. for more than thirty percent of the time. Beginning in April of 2006, the parents have had an agreement whereby Mr. T. has A. from Friday afternoon or evening until Monday morning for three consecutive weekends. Ms. T. keeps A. on the fourth weekend. Thus, the custody arrangement is based on recurring four-week periods, and is not related to calendar months. Under this arrangement, Mr. T. has physical custody nine days out of each twenty-eight, or approximately thirty-two percent of the time. From February through October, 2006, Ms. T. paid \$300 per month for childcare expenses.

CSSD recommended at the hearing that support be recalculated based on shared custody. After the hearing, CSSD recalculated the support obligations of the parents based on a shared custody arrangement, taking into account the amounts Ms. T. had paid for childcare.¹ The parties were afforded an opportunity to review CSSD's newest calculations and to comment in writing if they wished. Neither party objected to or commented on the revised calculations.

¹ Exhibits 12-14.

III. Discussion

The basis of Mr. T.'s argument is that support should be calculated based on shared not primary custody. According to Civil Rule 90.3(f)(1), "a parent has shared physical custody (or shared custody) of children for purpose of this rule if the children reside with that parent for a period specified in writing in the custody order of at least 30, but no more than 70, percent of the year, regardless of the status of legal custody."

Although there is not a written custody order in effect in this case, Mr. T. is correct that, with custody dividend on a 32/68 percent basis, support should be calculated based on shared custody. CSSD's calculations, summarized at Exhibit 4, page 1, reflect Mr. T.'s correct support obligation.

At the hearing, Mr. T. testified that as a construction worker his income is seasonal, with most of his income earned from mid-March through August or September, and almost no income from November through February. Mr. T. therefore requested seasonal withholding of his income. Ms. T. testified that she does not rely on child support for her and A.'s basic needs, and that she therefore had no objection to a seasonal support order. According to Civil Rule 90.3(c)(5),

If the non-custodial parent's income is seasonal, the court may order that the annual support amount be paid in unequal monthly payments, with higher payments during the months the parent expects to receive higher income and lower payments in other months. The court should not make such an order unless (a) it finds that the burden of budgeting for periods of unequal income should be placed on the obligee rather than the obligor and (b) the obligee agrees. The court's order must specify the annual support amount, the average monthly support amount, and the amount due month by month. The order must provide that variations from the average monthly amount begin with monthly payments in excess of the average monthly amount such that a deficit situation cannot occur. Until the excess payments begin, the average monthly amount must be ordered.

A seasonal support order is appropriate in this case. Under the unusual circumstance of this case, the child will benefit the most if the burden of budgeting for unequal periods of unequal income rests on Ms. T. and CSSD is able to increase withholding in the summer to provide Ms. T. funds for the coming winter. The parties should note, however, that because of the last sentence in the rule quoted above, Mr. T. will not be able to pay a lower amount this winter; the lower seasonal amount cannot go into effect until after the obligor has paid a summer of the higher amount.

Mr. T.'s ongoing support obligation is \$4044 per year, or \$337 per month. Mr. T. testified that his earnings begin to pick up in the middle of March, and then taper off in August

through September. Thus, Mr. T. can pay higher support during the middle six months of the year, but he has reduced income the first and last three months of each year.

Based on Mr. T.'s description of his earning schedule at the hearing, the most appropriate adjustment would be to increase the support obligation by one half for April through September, and to reduce it by one half during the first and last three months of the year. For the first year, in order to meet the requirement that the obligor not get a reduced rate until first paying the higher rate, Mr. T. should pay the normal amount of \$337 per month for January, February, and March of 2007. From then on, the support amount should be \$506.00 from April 1 through September 30, and \$168.00 from October 1 through March 31 of the following year. This payment schedule results in a total payment of \$4044 for the period from April 1 through March 31 of the following year.

This system of payment reflects a kind of fiscal year that begins on April 1 instead of on January 1. It should be noted that because Mr. T. is required to pay the average monthly amount of \$337 for the first three months of 2007 instead of the reduced winter rate of \$168.00, for 2007 he will ultimately pay \$507.00 more during the first calendar year than if support had not changed to a seasonal basis. In order to avoid unfairness to Mr. T., any future modifications or changes to the support amount should take this into account, and recognize that for this case the fiscal year has been shifted by three months.

IV. Conclusion

The parents have exercised shared custody since April 1, 2006. CSSD has properly calculated Mr. T.'s support obligation in Exhibits 10-14. For ongoing support beginning April 1, 2007, support should be collected on a seasonal basis according to the following schedule.

V. Order

IT IS HEREBY ORDERED that Mr. T.'s support obligation be set at the following monthly amounts:

October 5, 2005 – December 31, 2005:	\$435.00
January 1, 2006 – March 31, 2006:	\$439.00
April 1, 2006 – October 31, 2006:	\$366.00
November 1, 2006 – March 31, 2007:	\$337.00
April 1 – September 30, subsequent years:	\$506.00
October 1 – March 31, subsequent years:	\$168.00

DATED this 8th day of February, 2007.

By: Signed
DALE WHITNEY
Administrative Law Judge

3. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

Correct case no. 001140711

Correct third sentence under II Facts to read “seventy percent” not “thirty percent”

DATED this 7th of March, 2007.

By: Signed
Jerry Burnett
Director, Administrative Services

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