

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

IN THE MATTER OF)
)
 S. R.) Case No. OAH-06-0863-CSS
) CSSD Case No. 001129704
_____)

DECISION & ORDER

I. Introduction

The obligor, S. R., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 20, 2006. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on January 11, 2007. Mr. R. appeared by telephone. The custodian of record, C. M., did not appear.¹ Andrew Rawls represented CSSD. The child in this case is C. R. (DOB 00/00/93). The administrative law judge issues a support order incorporating certain revised calculations proposed by CSSD.

II. Facts

This case establishes the amounts of support due from February, 2004, through the present. Because the custodian has withdrawn from services, CSSD is currently only collecting support for the months of February, March, and April, 2004, and for the ten months from March through December, 2005, when the child received public assistance.

Mr. R. questioned certain elements of the methodology and figures that CSSD used to calculate his income. After some discussion at the hearing, Mr. R. agreed that CSSD had correctly calculated income and support for 2004. For 2005, Mr. R. and CSSD agreed that a fair and correct method to calculate average monthly income would be to divide by twelve the sum of the year's base pay, basic allowance for housing (BAH), basic allowance for subsistence (BAS) and flight pay for an E-5 service member. CSSD has prepared this calculation in a post hearing brief at Exhibit 6, pages 5-7, except that base pay for one month is set at an E-6 level to reflect that Mr. R. was promoted in December of 2005. Mr. R. agreed that CSSD had correctly calculated income and support for 2006. CSSD also recalculated support for 2006 and 2007 after the hearing. Support for these years was not in dispute, and the new figures do not vary significantly from the original amounts.

¹ Ms. M. has withdrawn from CSSD services; CSSD continues to collect for periods the child was in state custody.

III. Discussion

There are no issues of law or fact in dispute. The original agreed-upon amount of support for 2004 is \$504 per month. The recalculated amount for 2005 is \$698 per month, one dollar less per month than CSSD's original calculation. For the months that CSSD is actually collecting support, the total reduction in support will be ten dollars for the year 2005. The amount in the amended order for 2006 is \$803 per month, which is fourteen dollars more per month than CSSD's most recent calculation for 2006, and eight dollars less than CSSD has calculated for 2007. Because this amount was not in dispute at the hearing, the amount of \$803 per month should be used for 2006, 2007, and ongoing. So long as Ms. M. does not request services or receive public assistance on behalf of the child, CSSD will not attempt to collect for these years.²

Mr. R. also argued that the support obligation imposes such a burden on his current household that support should be varied to prevent manifest injustice. Mr. R. has two children living at home with him, both of whom are younger than C. Mr. R. detailed his household's monthly expenses, which total approximately \$3522 including costs of \$225 for entertainment and alcohol or tobacco. Mr. R. testified that his take-home income is approximately \$3,200 per month, and his wife's is about \$600 every two weeks. CSSD is not collecting ongoing support for C., and arrears are being collected at a rate of less than \$300 per month. With more income coming into the household than it spends per month, even with support accounted, Mr. R. has not met his burden under Civil Rule 90.3(c)(1) to demonstrate proof by clear and convincing evidence that manifest injustice would result if the support amount were not varied from the standard formula. After going through these figures, Mr. R. appeared to agree that he could afford to pay off arrears at the amount CSSD is currently collecting.

IV. Conclusion

Support should be set according to the methodology agreed upon by the parties in the amounts of \$504 per month from February through December of 2004, \$698 per month for 2005, and \$803 per month for 2006 and ongoing.

² Mr. R. should be aware that even if the custodian has withdrawn and CSSD is not attempting to collect support on her behalf at this time, the full support obligation does continue to accrue and could be collected at a later time.

V. Order

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

February 2004 – December 2004: \$504

January 2005 – December 2005: \$698

January 2006 – ongoing: \$803

DATED this 29th day of March, 2007.

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 16th day of April, 2007.

By: Signed
DALE WHITNEY
Administrative Law Judge

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