

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

In the Matter of:

T A. C

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OAH Case No. 07-0101-CSS  
CSSD No. 001143735

**NOTICE OF ISSUING CORRECTED DECISION AND ORDER**

The proposed decision and order in this matter was distributed on May 8, 2007. On May 24, 2007. A single “proposal for action “was received from CSSD which requested that a clerical error be corrected. On May 24, 2007, the proposed decision and order was adopted as the final administrative determination in this matter without the correction requested by CSSD.

Notice is herewith given that the decision and order which became final on May 24, 2007 has been corrected *nunc pro tunc* and is now distributed with this notice to the parties receiving the proposed decision. The sole correction is the change of February 2006 to February **2007** at line 3, page 5. Because the correction is insubstantial and not adverse to the obligor, no new proposals for action need be considered.

Dated this 27<sup>th</sup> day of August, 2007.

By: *Signed* \_\_\_\_\_  
James T. Stanley  
Administrative Law Judge

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REFERRAL FROM THE COMMISSIONER OF REVENUE**

In the Matter of:	)	
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T A. C	)	OAH Case No. 07-0101-CSS
	)	CSSD No. 001143735

**DECISION AND ORDER**

(CORRECTED)<sup>1</sup>

**I. Introduction**

T A. C is the father and obligor of record for T C (DOB 00/00/90), Z C (DOB 00/00/93), and N C (DOB 00/00/95). The mother and custodian of record for these three children is A C.

A C applied for the services of the Child Support Services Division, Alaska Department of Revenue (CSSD”) in July, 2006.<sup>2</sup> In response to her application, CSSD issued an Administrative Child Support and Medical Support Order (“child support order”) on September 15, 2006. On November 18, 2006,<sup>3</sup> the child support order was personally served on Mr. C in No Name City, Alaska. On December 1, 2006, Mr. C requested an Administrative Review of the child support order.<sup>4</sup> On December 4, 2006, CSSD sent a Request for Information to Complete Administrative Review to A C.<sup>5</sup> After December 1, 2006 and before February 1, 2007, Mr. C submitted eight pages of financial information to CSSD.<sup>6</sup>

CSSD issued an Amended Administrative Child Support and Medical Support Order on February 1, 2007 (“amended support order”).<sup>7</sup> This order established child support at \$1017.00 per month for three children, effective March 1, 2007; the order established an arrearage of \$8136.00 for the period beginning July 1, 2006 and ending February 28, 2007. Mr. C filed his Appeal of Administrative Review Decision on February 26, 2007.<sup>8</sup>

The formal hearing commenced on March 20, 2007 before Administrative Law Judge (“ALJ”) James T. Stanley, with the Office of Administrative Hearings (“OAH”). The hearing

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<sup>1</sup> See footnote 25.

<sup>2</sup> Exhibit 2, p. 1.

<sup>3</sup> Exhibit 1.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 5.

<sup>6</sup> Copies of undated financial information without a date-received stamp are included in the pre-hearing brief as Exhibit 6.

<sup>7</sup> Exhibit 7.

<sup>7</sup> Exhibit 9.

was recorded. Mr. C and Mrs. C appeared by telephone from separate locations. Andrew J. Rawls, Child Support Specialist, appeared in person for CSSD.

## **II. Facts**

Mr. C is 48 years old. He has lived separate and apart from his wife since February 2006. At the time of the hearing in this matter, he was enrolled at the No Name School in No Name City, Alaska and studying to become a member of the church's clergy. By April 20, 2007, Mr. C had earned 38 credit hours at the seminary and was awarded a One Year Certificate.<sup>9</sup> Although Mr. C claimed that "I have not been employed since 2003 or 2004, so have no income",<sup>10</sup> his testimony confirmed that he has commercially fished as recently as 2006. From late 2002 through the third quarter of 2005, Mr. C was employed by No Name Health Corporation as a nicotine control counselor. He received his training to be a nicotine control counselor at the Mayo Clinic.

Mr. C has earned a Certificate of Completion in No Name Services ("NNS") offered by the No Name Campus<sup>11</sup> in No Name City (Alaska). NNS is a two year course of study for Alaska village-based human service providers. In the early 1990's Mr. C, was trained at the Alaska State Troopers Academy to become a Village Public Safety Officer ("VPSO"). He served as a VPSO for five or six years. Mr. C also received building maintenance training from the Alaska Council of Village Presidents.

Mr. C's total gross income for 2006 has been calculated by CSSD to be \$46,749.73. CSSD used 2004 Alaska Department of Labor data<sup>12</sup> and financial information supplied by Mr. C. He has no physical disabilities that affect his potential for gainful employment. In its Administrative Review Decision,<sup>13</sup> CSSD found Mr. C to be voluntarily unemployed, largely because he maintained steady employment from mid-2002 through mid-2005 and earned at least \$10,000 per quarter in those years.

Mrs. C lives in No Name City 2, Alaska<sup>14</sup> with two of her three children. Her oldest daughter, T, attends school in No Name City. Mrs. C is not employed; she has no income. She receives no child support or financial assistance from Mr. C. When queried about how she

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<sup>9</sup> No Name City 3 Newsletter, April 29, 2007.

<sup>10</sup> Exhibit 9, p. 1.

<sup>11</sup> The No Name Campus is affiliated with the University of Alaska at No Name City 3.

<sup>12</sup> In 2004, Mr. C earned \$45,678.77 working for the No Name Health Corporation.

<sup>13</sup> Exhibit 8.

<sup>14</sup> No Name City 2, Alaska has an estimated population of 726 as of July, 2005. Ninety five percent of the housing units in No Name City 2 lack complete plumbing facilities. Source: *City-Data.com*, May 4, 2007.

supports herself and her children, she advised that she owns her home, receives food stamps, and uses some or all of her eleven year old son's \$500 per month disability benefit.

### **III. Discussion**

A parent is obligated both by statute and common law to support his or her children.<sup>15</sup> Civil Rule 90.3(a) (1) provides that an Obligor's child support amount is to be calculated based upon his or her "total income from all sources."

The Obligor has the burden of proving his or her earning capacity.<sup>16</sup> Alaska law allows CSSD to use a parent's "potential income" if a finding is made that the parent is voluntarily and unreasonably unemployed or underemployed.<sup>17</sup> In Mr. C's case, CSSD made a finding that he was voluntarily unemployed<sup>18</sup> because: (1) he earned at least \$10,000.00 per quarter from mid-2002 until mid-2005, then abandoned the steady job that provided the income; (2) he has not sought or found gainful employment after abandoning his job in 2005; (3) he has no disability or medical condition that prevents him from acquiring and maintaining employment.

Alaska case law requires that all of the circumstances of an obligor's change in employment must be considered when determining child support.<sup>19</sup> Mr. C's pursuit of education at a seminary is laudable; however, it is undisputable that Mr. C's decision to leave the work force and enter a seminary constitutes a voluntary decision to be unemployed. While no moral criticism of Mr. C's decision to enter the seminary is intended, Alaska law does not allow the consequent burden of that decision to fall on the "narrow shoulders" of his children.<sup>20</sup> CSSD's finding that Mr. C is voluntarily unemployed is reasonable and supported by the evidence.

If a parent is found to be voluntarily unemployed or underemployed, the child support is calculated using his or her "potential income" which is based on the parent's "work history, qualifications, and job opportunities."<sup>21</sup> The use of "potential income" to determine a child support obligation is not done to punish the Obligor parent.<sup>22</sup> The use of "potential income" insures that the children and the custodial parent are not "forced to finance" the Obligor parent's

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<sup>15</sup> *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

<sup>16</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991)

<sup>17</sup> Civil Rule 90.3(a) (4).

<sup>18</sup> Exhibit 8 (Administrative Review Decision, February 1, 3007).

<sup>19</sup> *Pattee v. Pattee*, 744 P.2d 658, 662 (Alaska 1987); *Patch v. Patch*, 760 P.2d 526, 529-30 (Alaska 1988).

<sup>20</sup> *Pugil v. Cogar*, 811 P.2d 1062 (Alaska 1991).

<sup>21</sup> Civil Rule 90.3, Commentary III.C.

<sup>22</sup> *Pattee*, 744 P.2d at 662.

lifestyle<sup>23</sup>. Even though Mr. C may enjoy life in seminary school, he cannot nonchalantly implement that preference at the expense of his three children. Nothing in Alaska law allows the non-custodial parent to make a decision not to pay the requisite amount of child support.

When deciding whether to impute income to an Obligor parent, Alaska law requires that the totality of the circumstance be considered <sup>24</sup> Mr. C is voluntarily unemployed and his child support obligation should be calculated from imputed annual income. In Mr. C's case, reliable income information is available from 2002 through the present to support the calculation of his child support obligation. CSSD's reliance on Mr. C's Alaska Department of Labor data for the year 2004 is reasonable.

#### **IV. Conclusion**

Mr. C did not meet his burden of proving that the CSSD's Administrative Review Decision, and the underlying Amended Administrative Child and Medical Support Order, are incorrect. The use of imputed income based upon prior earnings history to determine the amount of child support is warranted in this case. Requiring Mr. C to pay child support of \$1017.00 per month for his three children is reasonable, just, and supported by the record.

#### **V. Child Support Order**

Mr. C is liable for child support in the amount of \$1017.00 per month effective March 1, 2007. Mr. C is liable for arrearages due on July 1, 2006 in the amount \$1017.00, and a like amount on the first of each succeeding month through February, 2007.<sup>25</sup>

Dated this 27<sup>th</sup> day of August, 2007.

By: Signed \_\_\_\_\_  
James T. Stanley  
Administrative Law Judge

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

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<sup>23</sup> Id.

<sup>24</sup> Civil Rule 90.3, Commentary III.C.

<sup>25</sup> The Decision and Order dated May 8, 2007 has been corrected to state that Mr. C is liable for arrearages due on July 1, 2006 in the amount of \$1017.0 and a like amount on the first of each succeeding month through February 2007.