

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

In the Matter of	)	
	)	
W O	)	OAH No. 18-0601-CSS
_____	)	Agency No. 001220838

**DECISION AND ORDER**

**I. Introduction**

L J appeals an amended administrative child and medical support order issued by the Child Support Services Division setting W O’s arrears and ongoing child support obligation for the child L at \$50 a month. Although Mr. O is currently incarcerated, he has not been continuously incarcerated since L’s birth, so Ms. J argues that his child support obligation for months when he was not incarcerated should be set based on Mr. O’s earning’s history or at least minimum wage, rather than the \$50 minimum child support amount.

Because Mr. O is currently incarcerated and has no earned income, the ongoing child support amount of \$50 is affirmed. Because the division’s regulations require that child support arrears be based on actual income and do not provide for imputation of income in calculation of arrears, and because the evidence presented indicates that Mr. O had no reported earned income from January 2017 to date, the \$50 monthly arrears from April 2017 through May 2018 set in the amended order are also affirmed.

**II. Facts**

L T-O was born on March 2017. He lives with his mother, L J. On April 13, 2017, Ms. J applied to the Child Support Services Division for establishment of paternity and a child support order for L, listing W E. O as the child’s father.<sup>1</sup>

On June 27, 2017, the division ordered both Ms. J and Mr. O to provide financial and medical insurance information.<sup>2</sup> On June 30, 2017, Mr. O provided a child support guidelines affidavit, indicating that he was incarcerated at the No Name Correctional Center and had no income.<sup>3</sup> On November 27, 2017, the division issued a default order establishing Mr. O’s

---

<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 4.

paternity of L, reciting that Mr. O had been personally served with a notice of paternity and financial responsibility but had not responded.

On December 11, 2018, the division issued an administrative child support and medical support order, setting Mr. O's child support at \$318 a month for one child, with \$50 a month in arrears for the period April 2017 through December 2017.<sup>4</sup> The division set the ongoing support obligation at \$318 a month based on a permanent fund dividend, native corporation dividends, and full-time employment at minimum wage. The division used the minimum wage figure because when it made the calculation Mr. O had absconded from Department of Corrections' custody.<sup>5</sup>

On December 19, 2017, Ms. J filed a request for an administrative review, arguing that Mr. O is capable of working, and based on his earnings history the \$318 a month figure was incorrect.<sup>6</sup> On April 5, 2018, Mr. O indicated that he disagreed with the \$318 figure because he was currently incarcerated and had no earnings.<sup>7</sup> The division held a telephonic administrative review conference in which both Ms. J and Mr. O participated. On May 22, 2018, the division issued an amended administrative child support and medical support order, finding that Mr. O was currently incarcerated, and setting his ongoing child support obligation at \$50 a month, with arrears of \$50 a month from April 2017 through May 2018.<sup>8</sup>

Ms. J appealed the administrative review decision.<sup>9</sup> A telephonic hearing was held on June 26, 2018. Ms. J represented herself. Child Support Specialist Brandi Estes presented the division's case. Mr. O participated in the hearing. The record closed on June 26, 2018.

### **III. Discussion**

This is Ms. J' appeal, and the sole issue is whether the correct *amount* of Mr. O's child support obligation is \$50 a month, assuming child support is owed. At the hearing, there was testimony indicating that the parties may be following up with the division on the order establishing Mr. O's paternity. Although the order establishing paternity is the foundation of Mr. O's child support obligation, and issues relating to the establishment or disestablishment of

---

<sup>4</sup> Exhibit 5 at 1; Exhibit 5 at 10.

<sup>5</sup> Exhibit 8 at 2.

<sup>6</sup> Exhibit 6. Ms. J argued that Mr. O was capable of earning at least \$65,000 a year. The division verified that Mr. O's earnings reported to the Department of Labor and Workforce Development for 2016 totaled \$61,650. Exhibit 10.

<sup>7</sup> Exhibit 7.

<sup>8</sup> Exhibit 8.

<sup>9</sup> Exhibit 9 at 2.

paternity may be the subject of other administrative proceedings with the division to which separate appeal rights may attach, paternity is not the subject at issue in this formal hearing.

Civil Rule 90.3 provides that an obligor's child support amount is to be calculated based on the obligor's "total income from all sources," minus allowable deductions specified in the rule. The resulting adjusted income figure is multiplied by 20 percent to arrive at the child support obligation for one child.<sup>10</sup> However, the minimum child support amount, with few exceptions, is \$50 a month.<sup>11</sup>

Under the division's regulations, arrearages are set beginning in the month the custodial parent applied for services and continue to the effective date of the ongoing support obligation.<sup>12</sup> Arrearages are based on actual income that the parent earned or received in the calendar year.<sup>13</sup>

In this case, the division set both Mr. O's arrearages and ongoing obligation at \$50 a month. Ms. J indicated that she understood that Mr. O did not have earnings while incarcerated. However, she argued that Mr. O had not been continuously incarcerated after L was born, that he was physically capable of working, and that when he was not incarcerated and not working it was because he chose not to work. Therefore, in her view, Mr. O's child support arrearages for the months when he was not incarcerated should be at least \$318 a month, the amount based on employment at minimum wage in the division's original calculations.<sup>14</sup>

The law permits basing a parent's ongoing child support on the parent's potential income where the parent is voluntarily unemployed.<sup>15</sup> However, this is not the case for arrearages. The division's regulations on setting child support arrearages specifically require that arrearages be based on actual annual income, rather than imputed income.<sup>16</sup>

The division's calculations were based on actual income, not imputed income. When the division calculated Mr. O's income for purposes of the amended administrative child support and medical support order, it included a permanent fund dividend and native corporation dividends, but no wages.<sup>17</sup> The division consulted the Alaska Department of Labor and Workforce

---

<sup>10</sup> Civil Rule 90.3(a).

<sup>11</sup> Civil Rule 90.3(c)(3). The exceptions include situations involving extended visitation with the non-custodial parent, or shared, divided, or hybrid physical custody. None of those apply in this case.

<sup>12</sup> 15 AAC 125.105(a)(2).

<sup>13</sup> 15 AAC 125.030(e).

<sup>14</sup> Exhibit 9 at 2, 4; Exhibit 5 at 9.

<sup>15</sup> Civil Rule 90.3(a)(4); 15 AAC 125.060.

<sup>16</sup> 15 AAC 125.030(e).

<sup>17</sup> Exhibit 8 at 10.

Development to obtain Mr. O's reported wages and unemployment benefits. The division presented an affidavit showing wages for Mr. O only through the fourth quarter of 2016. The affidavit also indicated that Mr. O had a claim for unemployment beginning in January 2017, but that no unemployment benefits were paid between January 2017 and January 2018.<sup>18</sup> At the hearing, the division's representative stated that Mr. O had no reported wages in 2017 or 2018.

In a child support hearing, the person who filed the appeal, in this case Ms. J, has the burden of proving by a preponderance of the evidence that the division's order is incorrect.<sup>19</sup> Ms. J did not dispute the division's representation that Mr. O had no reported earnings in 2017 or 2018. She did not offer evidence of actual earnings (reported to the Department of Labor and Workforce Development or otherwise), or evidence of other income not included in the division's calculations. There is no evidence in the record that Mr. O had any actual income in 2017 or 2018 not included in the division's calculations. In the absence of any evidence of additional income, the division's order basing Mr. O's arrears child support obligation solely on Mr. O's PFD and native corporation dividends must be affirmed.

With regard to the ongoing obligation, it is undisputed that Mr. O is now incarcerated and can be credited with no actual or imputed wage income. This means that the \$50 ongoing calculation based only on dividends must be affirmed as well. If there is a change in circumstances in the future, such as Mr. O's release from incarceration, either parent may request that the division modify Mr. O's ongoing child support obligation.

#### **IV. Conclusion**

The division correctly set Mr. O's ongoing child support at \$50 a month. The division correctly set arrears of \$50 a month from April 2017, when Ms. J requested establishment of Mr. O's child support obligation, through May 2018, when the division issued its administrative review hearing decision and amended administrative child and medical support order.

The child support amount in the division's order was calculated using the primary custody formula in Civil Rule 90.3(a) without variance, however, the minimum amount specified in Civil Rule 90.3(c)(3) applies.

---

<sup>18</sup> Exhibit 10.

<sup>19</sup> 15 AAC 05.030(h).

**V. Child Support Order**

The Division’s Amended Administrative Child and Medical Support Order issued on May 22, 2018 is affirmed.

Dated: June 28, 2018.

By: Signed  
Signature  
Kathryn L. Kurtz  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

**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 16<sup>th</sup> day of July, 2018.

By: Signed  
Signature  
Kathryn L. Kurtz  
Name  
Administrative Law Judge  
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]