

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

IN THE MATTER OF)
)
A. S.) Case No. OAH-07-0561-CSS
) CSSD Case No.001145410

DECISION & ORDER

I. Introduction

The obligor, A. S., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on August 17, 2007. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on October 4, 2007. Mr. S. appeared by telephone. Andrew Rawls represented CSSD. The custodian, S. S., did not appear.¹ The child is S. S. (DOB 00/00/06). The support amount is affirmed the last two months of 2006, but increased for 2007 and ongoing to \$372 per month for one child.

II. Facts

CSSD established this case when the child began receiving public assistance. CSSD set Mr. S.'s support obligation at \$695 per month for the last two months of 2006 and \$263 per month for 2007 and ongoing.

In 2006 Mr. S.'s total gross income was \$53,373.96. Most of this income, \$51,186, was earned from commercial fishing out of Dutch Harbor, an occupation Mr. S. had been pursuing for several years, alternating between living in Anchorage. After 2006, Mr. S. went back to Town, where he was raised. He is now married and working on adopting his wife's two children, and he and his wife were expecting another child at the time of the hearing. Mr. S. testified that he could go back to fishing in January, but now that he is married and taking care of children he does not plan to go back to sea.

Mr. S.'s work experience includes general labor, carpentry, and some limited sheet metal work. He has a high school diploma and has completed Job Corps training in carpentry and heavy equipment operation. Mr. S. testified the he received unemployment benefits in Washington State in 2007, but he didn't know how much. At the time of the hearing, Mr. S. was working part-time at the Native store in Town, earning \$350 to \$400 on a biweekly basis. He testified that at that time there were no full-time jobs available, but he was looking at several

¹ Ms. S. did provide a letter outlining her comments regarding the case, and this letter has been considered.

full-time positions and expected something to open soon. Questioned about the total earnings he anticipated for 2007, Mr. S. testified that he “will be lucky if I can even make twenty-five to thirty thousand this year, the way I’m working.”

At this point Mr. S.’s plans are not clear. He is thinking of staying in Town for a while, but he might move to Nome or maybe someplace else.

III. Discussion

Child support is calculated as a percentage of the obligor’s total income, after making adjustments for expenses such as taxes, retirement fund contributions, and support paid for older children of previous relationships.² The formula for calculating support allows a deduction for the support of older children of a previous relationship, but it does not allow a deduction for younger children of subsequent relationships.

CSSD calculated Mr. S.’s support for 2007 at \$263 per month based on annual income of \$16,222.50. CSSD determined this level of income for 2007 based on Department of Labor data for this year, pay stubs, and NANA and PFD dividend income. CSSD did not know that Mr. S. had received unemployment benefits from Washington State, or that Mr. S. expected to find full-time employment soon. Since Mr. S. testified that he might make \$25,000 to \$30,000 this year, CSSD requests that support be recalculated based on annual income of \$27,500.

Mr. S.’s estimate of his earnings for this year was a quick estimate, and it is clear he is in a period of transition. Under the circumstances, support based on the low end of his estimate, \$25,000, is appropriate. Support for one child based on annual gross income of \$25,000 plus a PFD is a reasonable basis for calculating support, and under this amount the monthly support amount would be \$372 for one child.³ As Mr. S.’s actual earnings for the year may be higher or lower, either Mr. S. or Ms. S. may wish to request another modification after Mr. S.’s total earnings for 2007 have been established and his situation has become more predictable.

Mr. S. filed this appeal because

I am recently married with two other children to support I only have a part time job and barely receive 40 hours every two weeks. I am also currently renting a house out here for 300 hundred a month plus I pay the electric bill along with propane and stove oil. In your last letter you stated that the reason for not reducing my payments was because I had the choice to leave fishing and working part time doesn’t qualify for reduction. Well I did not have the choice to leave and where I am living there is very few full time jobs and mainly only part time ones an I’m extremely lucky to even have a job. With you trying

² Civil Rule 90.3(a).

³ This figure was calculated using CSSD’s online calculator, which includes standard deductions for taxes.

to make me pay that much money and withdrawing almost my entire months pay I will not be able to support my family.

Mr. S. provided a breakdown of his monthly expenses. For the most part, his expenses are reasonable. His rent is only \$300 and utilities are around \$200 per month. He does not own any vehicles. The family's greatest expense is food, at \$1200 per month, but they also receive \$950 in food stamps.

Support may only be varied from the Civil Rule 90.3(a) formula when there is clear and convincing evidence that manifest injustice will result if the support amount is not varied.⁴ This case does not present such clear and convincing evidence. Under the law, Mr. S.'s decision to take on the responsibility of supporting a subsequent family does not relieve his duty to support his first child. Mr. S.'s statement that paying child support at the current rate will make it impossible for him to support his family overlooks the fact that S. is a member of Mr. S.'s family needing support. \$372 per month is not an extravagant amount for one parent to support his child.

IV. Conclusion

CSSD has correctly calculated Mr. S.'s income and support obligation for 2006. For 2007, the best estimate of Mr. S.'s annual gross income is \$25,000 plus one permanent fund dividend. This level of income results in a support obligation of \$372 per month for one child. This case does not present clear and convincing evidence that manifest injustice would result if support is not varied from the standard amount.

V. Order

IT IS HEREBY ORDERED that arrears in this case be set at \$695 per month for November and December of 2006, and \$372 per month for January 2007 through December, 2007. Ongoing support shall be set at \$372 per month effective January 1, 2008.

DATED this 17th day of December, 2007.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

⁴ Civil Rule 90.3(c).
OAH No. 07-0561-CSS

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 notices, 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 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 4th day of January, 2008.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

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