

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

IN THE MATTER OF)
)
 J. K.) Case No. OAH-07-0571-CSS
) CSSD Case No. 001029909
_____)

DECISION & ORDER

I. Introduction

The obligor, J. K., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on September 6, 2007.

Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on October 11, 2007. Mr. K. appeared by telephone, as did the custodian of record, R. C.. Andrew Rawls represented CSSD. The children are T. K. (DOB 00/00/91), T. K. (DOB 00/00/92) and (T. K. DOB 00/00/93). The administrative law judge affirms the modified order.

II. Facts

The existing order had set Mr. K.'s support obligation at \$50.00 per month for three children. After the custodian requested review, CSSD set support at \$706.00 per month for three children, based on projected annual income in 2007 of \$30,038.24 in wages plus a PFD.

Mr. K. works two different jobs. One is as a personal care aide (PCA) for his mother through Consumer Direct Personal Care. Mr. K.'s year-to-date earnings from Consumer Direct through September 15, 2007, were \$19,589.62. Mr. K.'s other job is chore services for his mother through a firm called I. C.. Mr. K.'s year-to-date earnings through September 29, 2007, from I. C. were \$2,891. During the hearing, CSSD added these amounts together, divided the sum by nine and then multiplied that figure by twelve to come up with a projected annual wage figure of \$29,974 for 2007.

The amount that Mr. K. earns per week, particularly from Consumer Direct, is subject to change from week to week, depending on the schedule of services that his mother requires in a given week. While there is an upper limit on how much Mr. K. can be paid for services, there is no bottom limit. Mr. K. testified that due to several changes with the contract providers the amount he is able to earn may decrease in the immediate future. Mr. K.'s mother has also recently moved in with him, and this may limit Mr. K.'s eligibility to be reimbursed for services.

Mr. K. calculated his estimated projected wage income for 2007 to be \$27,300. Mr. K. derived this figure based on twenty-nine hours per week at \$15 per hour from Consumer Direct, plus ten hours per week at \$9 per hour from I. C..

Mr. K. testified that he earned \$18,185 in wages in 2006, and that he was unemployed during the first quarter of 2006. According to CSSD, Department of Labor records show that Mr. K. earned \$4,302.88 in the second quarter of 2006, \$7,717.63 in the third quarter, and \$6,164.94 in the fourth quarter, for total wage income of \$18,185.45 for the year.

III. Discussion

Child support is based on a percentage of the obligor's annual gross income, after making adjustments for deductions such as taxes, retirement contributions, and union dues.¹ Mr. K. asserts that CSSD's support order was based on incorrect income information.

While Mr. K. has calculated a lower projected income for 2007 than that used by CSSD, the best available evidence of what Mr. K. will have earned by the end of the year is the latest year-to-date wage information that Mr. K. provided at the hearing. This information is based on income that has actually been earned over a period that covers three-fourths of the year. While Mr. K. testified that his income may decrease in the future, there is still a speculative element to that possibility, and there is also a possibility that he may pick up other part-time work to offset any decrease that might actually materialize.

Extrapolated over the full year, Mr. K.'s year-to-date earnings show annual wage income for 2007 of \$29,974, a number that is surprisingly close to the \$30,038.24 that CSSD estimated Mr. K. would earn in wage income for the year. When the actual value of \$1,654 for the 2007 PFD is considered instead of CSSD's estimate of \$1,106.96 based on last year's dividend, it appears that Mr. K.'s total gross income for the year may be slightly higher than the figure on which CSSD based the modified order, but not enough to warrant changing the modified order from its current amount.

Mr. K. also raised a number of concerns regarding the custody and care of one of the children. These issues would properly be brought before the court that issued the custody order for these children, but are not subject to review in this administrative forum.

IV. Conclusion

The best available evidence of Mr. K.'s earnings support the figures used by CSSD to calculate Mr. K.'s support obligation. Should Mr. K.'s income change in subsequent years, further modification may be in order at that time; for now the modified order should stand as CSSD issued it on September 6, 2007.

¹ Civil Rule 90.3(a).
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V. Order

IT IS HEREBY ORDERED that the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on September 6, 2007, be AFFIRMED.

DATED this 31st day of December, 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 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 25th day of January, 2008.

By: Signed _____
Terry L. Thurbon for
Dale Whitney
Administrative Law Judge

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