

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

IN THE MATTER OF:)

E T. X)

) OAH No. 07-0695-CSS

) CSSD No. 001145126

DECISION AND ORDER

I. Introduction

The Obligor, E T. X, appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on November 13, 2007. The Obligee child is M, DOB 00/00/01.

The formal hearing was held on January 3, 2008. Both Mr. X and the custodian, J J. H, appeared by telephone. Mr. X is represented by Herbert Pearce. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 31, 2008.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based on the record and after due deliberation, Mr. X's appeal is granted and his child support is set at \$660 per month, effective October 2006.

II. Facts

In October 2006, a child support agency from another state requested that CSSD establish Mr. X's child support obligation for M, DOB 00/00/01.¹ On May 4, 2007, CSSD served a Notice of Paternity and Financial Responsibility on Mr. X.² He failed to respond so CSSD issued an Order Establishing Paternity on June 6, 2007,³ followed by an Administrative Child Support and Medical Support Order on June 19, 2007. That order set Mr. X's child support at \$604 per month, with arrears of \$4,832 for the period ending June 2007.⁴

Mr. X appealed the paternity issue and CSSD conducted genetic tests that revealed his probability of paternity of M is 99.99%.⁵ Thereafter, CSSD requested income information, but

¹ See Exh. 16 at pg. 2.

² Exh. 5.

³ Exh. 6.

⁴ Exh. 7.

⁵ Exh. 2.

Mr. X did not respond.⁶ On November 13, 2007, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. X's child support at \$705 per month, with arrears of \$9,870 for the period from October 2006 through November 2007.⁷ Mr. X filed an appeal and requested a formal hearing on December 3, 2007.⁸

At the hearing, Mr. X's attorney raised several issues to be addressed in the child support calculation: Mr. X's taxes, retirement deduction, health insurance deduction and a direct payment credit of \$1,800. He indicated that Mr. X would be withdrawing his earlier request for credit for support paid for a prior child. Mr. X testified about his income and provided his 2006 income tax return. It indicates his 2006 earnings totaled \$44,645, plus taxable interest of \$108 and the PFD of \$1,107, for total income in 2006 of \$45,860.⁹ Mr. X agreed to document his retirement deduction, which he indicated he has been paying since before October 2006. He added that the reason he was withdrawing his request for a prior child credit is because he and the other parent of his prior child share custody and he does not pay support directly to her or incur other expenses. Ms. H testified that she did receive \$1,800 from Mr. X, but said it was prior to October 2006. The hearing participants inspected the canceled checks Mr. X provided as evidence of his direct payments to Ms. H. The parties agree all of the payments were prior to October 2006, the first month of his child support obligation under this order.¹⁰ The administrative law judge informed Mr. X that he would not be entitled to the payments on that basis.

After the hearing, Mr. X provided documents that show he contributes 6% of his income to his retirement savings plan.¹¹ CSSD used those documents and Mr. X's 2006 federal income tax return to calculate his 2006 and ongoing child support at \$660 per month.¹²

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹³ Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated from his or her

⁶ Exh. 14.

⁷ Exh. 15.

⁸ Exh. 17.

⁹ Exh. 18.

¹⁰ See Exh. 10 at pgs. 10-24.

¹¹ Exh. 19 at pg. 17.

¹² Exh. 20.

"total income from all sources." Mandatory retirement benefits up to 7.5% of the parent's income may be included in the deductions section of the child support calculation.¹⁴

After Mr. X documented he regularly contributes 6% of his earnings to retirement, CSSD incorporated that deduction into his child support calculation. Other than the issue of his health insurance credit, no other issues remained to be decided. The parties were informed at the hearing that the health insurance issue would be referred back to CSSD so that Mr. X's caseworker could make the appropriate adjustment for health insurance premiums he pays on M's behalf and make any necessary adjustments in the future without having to go through the hearing process again.

IV. Conclusion

Mr. X met his burden of proving by a preponderance of the evidence that the Amended Administrative Child Support and Medical Support Order was incorrect. Utilizing his actual 2006 income and his 6% retirement contribution, CSSD correctly calculated Mr. X's child support at \$660 per month for one child. This figure should be adopted, effective October 2006.

V. Child Support Order

- Mr. X is liable for child support in the amount of \$660 per month for the period from October 2006 through July 2008, and ongoing;
- CSSD is directed to determine the appropriate health insurance credit in Mr. X's child support obligation and to adjust the credit as necessary in the future;
- All other provisions of CSSD's November 13, 2007, Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 27th day of June, 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ Civil Rule 90.3(a)(1)(A).

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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 16th day of July, 2008.

By: Signed
Signature
Christopher Kennedy
Name
Administrative Law Judge
Title

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