

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

IN THE MATTER OF)	
)	
C. S.)	Case No. OAH-08-0564-CSS
_____)	CSSD Case No. 001148272

DECISION & ORDER

I. Introduction

The obligor, C. S., requested an administrative review of an Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on January 15, 2008. CSSD denied administrative review, and Mr. S. requested a formal hearing. CSSD moved for summary adjudication.

As there are no facts in dispute, an evidentiary hearing is unnecessary. Mr. S. has asked for a lower support obligation. Because CSSD has set support at the lowest amount allowable by law, the administrative order is affirmed.

II. Facts

CSSD initially moved for remand of the case to provide Mr. S. an administrative review. A hearing on that motion was held on October 30, 2008. Mr. S. appeared by telephone. The custodian, A. T., did not appear.

CSSD stated at the hearing that although it was offering to conduct an administrative review, there was no chance that the agency would change its decision because the division already agreed with Mr. S. that, because he is incarcerated, he has no significant earning capacity. In the alternative, CSSD then moved for summary adjudication. The parties were given an opportunity to respond to this motion, but no response was filed.¹

III. Discussion

Summary adjudication is appropriate when there are no material issues of fact.² Mr. S. and CSSD are in agreement that Mr. S. is incarcerated and does not have any means in the immediate future to earn significant income. The only issue is what level of support should be set under these factual circumstances. Because there are no material issues of fact in dispute,

¹ On the day of the hearing, OAH attempted to contact Ms. T. The person answering her phone stated that she was out of town. Both parties were sent a copy of a written order offering them an opportunity to respond to the motion for summary adjudication. Mr. S. stated at the hearing that he might want to hire a lawyer to help him, but there has been no entry of appearance by an attorney or further contact by either party.

² 2 AAC 64.250.

CSSD's motion for summary adjudication should be granted and the case should be decided based on the record.

According to Civil Rule 90.3(a), support in a primary custody situation should normally be set at 20 percent of the obligor's annual income, after certain deductions for expenses such as taxes, union dues, and retirement plan contributions. Under this formula, Mr. S.'s obligation would be almost nothing, since he is able to earn little or no income while he is incarcerated. However, Civil Rule 90.3(c)(3) states that "the minimum child support amount that may be ordered is \$50 per month" except when a parent has extended visitation or there is shared or divided custody. Because CSSD has already set support amount at \$50.00 per month, there is nothing more it can do to reduce Mr. S.'s support obligation, even though he currently has no income.

IV. Conclusion

Summary adjudication should be granted. CSSD's decision to set Mr. S.'s support obligation at the lowest possible level of \$50.00 per month for one child should be affirmed.

V. Order

IT IS HEREBY ORDERED that CSSD's motion for summary adjudication be GRANTED, and that no evidentiary hearings be scheduled in this matter.

IT IS FURTHER ORDERED that the Administrative Child Support and Medical Support Order issued by the Child Support Services Division on January 15, 2008, be AFFIRMED.

DATED this 4th day of February, 2009.

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 23rd day of February, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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