

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

IN THE MATTER OF:)

J. W. S.)
_____)

OAH No. 08-0584-CSS
CSSD Case No. 001132267

DECISION AND ORDER

I. Introduction

This case concerns the obligation of J. W. S. for the support of W. M. (DOB 00/00/04). The custodian of record is A. M.

On October 9, 2008, the Child Support Services Division (Division) issued an amended administrative child support order establishing a support obligation in the amount of \$531 per month effective November 1, 2008, with arrears in the amount of \$7,538 for the period from June 1, 2007 through October 31, 2008.

Mr. S. filed an appeal and requested an administrative hearing. The Office of Administrative Hearings conducted a telephonic hearing on November 19, 2008. David Peltier represented the division. Mr. S. and Ms. M. participated.

Mr. S. argues that the amended order is based on an incorrect projection of his income. Because Mr. S. has not shown that the Division's decision was erroneous, the amended order is affirmed.

II. Discussion

Since 2005, J. S. has regularly worked as a heavy equipment operator and as a construction laborer. His employment is project-oriented and somewhat seasonal, resulting in recurring periods of unemployment, and the number of hours he works has varied from year to year. Typically, he earns \$15-\$18 per hour, plus overtime. His total annual gross wages over the period from the first quarter of 2005 through the third quarter of 2008 have averaged \$26,615, varying from a low of \$18,990 in 2007 (when he was incarcerated for a period) to a projected high of \$37,926 in 2008.

In the first quarter of 2008, Mr. S. worked on the North Slope for N. and he earned \$13,172. He left that job voluntarily and went to work for E. M. of Fairbanks in the second quarter of 2008, where he earned \$8,446. Mr. S. was laid off from his job at

E. M. of Fairbanks before the end of the third quarter, during which he earned \$6,826. He went to work for C.-A. Construction in the fourth quarter of 2008, beginning in October. Mr. S. anticipates being laid off before the end of the year. He expects that the job with C.-A. will start up again in January for three or four months. Mr. S.'s weekly wage at C. - A. is about \$1,000. Mr. S. can reasonably anticipate income from C. - A. of about \$10,000 in the fourth quarter of 2008 and \$10,000 in the first quarter of 2009. Mr. S. anticipates that after the C. - A. job shuts down he will find work with E. M. at substantially the same wages as last year.

III. Discussion

The division establishes a child support obligation based upon “the expected actual annual income that the parent will earn or receive when the child support award is to be paid.”¹ When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.²

In this case, the evidence of Mr. S.'s earnings in 2007 and through the end of the third quarter of 2008 is undisputed. Arrears should be established based on his actual earnings. At the hearing, Mr. S. agreed that the amount of arrears set for 2007 was appropriate, and he did not dispute the Division's income figures that the Division had used in calculating arrears through the end of the third quarter of 2008.

Mr. S.'s arrears and ongoing support beginning in the fourth quarter of 2008 should be based on his earnings in his current employment and his anticipated future earnings. The testimony and evidence suggests that Mr. S.'s annual wages beginning in the fourth quarter of 2008 will not be substantially different that the amount projected by the Division in its amended order, which was \$36,874.³ Mr. S. testified that at C. – A. he earns \$17 per hour and works 50-60 hours per week. At time and a half for overtime, this is equivalent to about \$1,000 per week.⁴ If Mr. S. works ten weeks per quarter for C. - A., therefore, his quarterly earnings will be about \$10,000. Since Mr. S. anticipates returning to work at E. M. for the same work as last year, his total wages for the period from October 1, 2008, through September 30, 2009, can reasonably be anticipated to be

¹ 15 AAC 125.030(a).

² Duffus v. Duffus, 72 P.3rd 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3rd 52, 56 (Alaska 2001).

³ Ex. 10, p. 2.

⁴ 40 hrs. @ \$17/hr = \$680; 15 hrs. @ \$25.50/hr = \$382.50.

about \$35,272: \$20,000 for two quarters of work at C. - A. and \$15,272 for two quarters at E. M.. In addition, Mr. S. testified that he would be eligible for unemployment compensation.

Mr. S. points out that he has never earned as much as \$30,000 per year, and he argues that the projected income of \$36,874 is too great in light of his past earnings. While the projected amount is greater than his prior years' income, it does not appear to be unreasonably so. Mr. S.'s relatively lower earnings in 2006 and 2007 appear due in part to periods of incarceration.⁵ When he does work, Mr. S. can earn substantial wages, though he has periods of unemployment between jobs. Leaving aside the first two quarters of 2007, when Mr. S. had no earnings (possibly due to incarceration), his average quarterly wages from the first quarter of 2005 through the third quarter of 2008 were \$7,677, equivalent to annual wages of \$30,708. Adding to that amount unemployment compensation and an Alaska Permanent Fund dividend would result in annual income of \$35,000 or more. Mr. S. is single and has no dependents, and there is no indication that a support order of \$531 per month would cause a hardship to him.

IV. Conclusion

Mr. S. has not shown by a preponderance of the evidence that the Division's amended support order is erroneous. The amended order should therefore be affirmed.

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated October 9, 2008, is **AFFIRMED**.

DATED: December 30, 2008.

Signed _____

Andrew M. Hemenway
Administrative Law Judge

⁵ See Ex. 8, pp. 1, 7.

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 21st day of January, 2009.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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