

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

IN THE MATTER OF)
)
 J. W.) Case No. OAH-08-0603-CSS
) CSSD Case No. 001136702
_____)

DECISION & ORDER

I. Introduction

The obligor, J. W., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on October 27, 2008. At Mr. W.'s request, a formal hearing was held on November 26, 2008. Andrew Rawls represented CSSD by telephone. Neither Mr. W. nor the custodian of record, E. O., appeared at the hearing.¹ The children are D. W. (DOB 00/00/00), E. W. (DOB 00/00/02) and L. W. (DOB 00/00/03).

Based on earnings reported to the Department of Labor, support is set at \$644 per month for three children.

II. Facts

Both of the parties live in No Name Village. The previous order in this case had been set at zero, based on divided custody. According to CSSD, Ms. O. began receiving public assistance with all three children on March 24, 2008. The State of Alaska then initiated this modification action.

In his appeal, Mr. W. stated that "I've been with my children for two years now." Mr. W. went on to write, "ask E., ask the public Asst. Agent here in No Name Village, call anybody here in No Name Village and ask that question!!! I supported my family 100%!!!!!!!"

Because neither Mr. W. nor Ms. O. appeared at the hearing, it was not possible to ask either of them if Mr. W. was with the children. Likewise, there were no witnesses on the phone from No Name Village who could answer any questions about whether Mr. W. was living with his children. Although CSSD stated in its brief that it "needs testimony from both parties as to

¹ Notice of the hearing was sent to both parties by certified mail, to Mr. W. by general delivery and to Ms. O. at a post office box address. Mr. W. signed the receipt for both notices. The notices directed the parties to call the OAH to provide a number for the ALJ to call at the time of the hearing. Neither party provided a number. Prior to the hearing, an OAH clerk called the number on file for Mr. W. and was advised that Mr. W. was not at work that day. The ALJ called the work number during the hearing and left a message for Mr. W. to call the OAH. The ALJ attempted to call Ms. O. at two numbers on file for her. At one of these numbers, someone answered but stated that Ms. O. did not live at that address. The other number had been disconnected. The record was left open until December 8, 2008, to allow the parties an opportunity to contact the OAH; neither party contacted the OAH after the hearing.

the custody of the children” and that “letters from witnesses concerning who had custody of the children would be beneficial,” no letters or other evidence of any kind has been filed.

CSSD calculated the support amount in the modified order based on the amount of income reported to the Department of Labor for Mr. W. in the last two quarters of 2007 and the first two quarters of 2008.² Based on the total earnings for this period of \$19,675.25, CSSD calculated Mr. W.’s support obligation for three children to be \$512 per month.³ At the hearing, CSSD stated that the Department of Labor had just reported that Mr. W.’s wages for third quarter of 2008 were \$15,702.60. Mr. W.’s wages for the one-year period including the last quarter of 2007 and the first three quarters of 2008 were \$25,927.00. Based on this amount of annual wage income and a permanent fund dividend, CSSD has calculated Mr. W.’s monthly support obligation to be \$644 for three children.

III. Discussion

For primary custody of three children, child support is calculated as 33 percent of the obligor’s adjusted annual income.⁴ Income is calculated based on the best available evidence of the obligor’s actual or potential income.⁵ At a formal hearing, the person requesting the hearing has the burden of proving that CSSD’s decision is in error.⁶

Mr. W.’s argument in his hearing request is that he should not be required to pay support at all, because he was in the home with the children. If it could be shown that Mr. W. has been living with his children, he would be correct that he should not have to pay child support. But Mr. W. was given ample opportunities to testify about whether he was living with the children, or to submit written letters from other people who would know, or to have other people from the village testify on the phone about where he and the children were living. Because Mr. W. did not appear for the hearing, and the custodian could not be reached to explain the situation, there is no evidence available to show that CSSD was mistaken in believing that Mr. W. was not living with the children.

² A comment at the bottom of Exhibit 5 states that the calculation was based on the “last three consecutive quarterly earnings + PFD.” The calculation was actually based on a four-quarter period, but no because no wages were reported at all for the first quarter of 2008 there are only three quarters showing earnings for the period.

³ Exhibit 5.

⁴ Civil Rule 90.3(a).

⁵ 15 AAC 125.050.

⁶ 15 AAC 05.030(h).

Mr. W. is correct that he should not have to pay support for times he is in the family home supporting the children. Mr. W. may contact his caseworker at any time to show that the family is together in one house.

The most recent available information regarding Mr. W.'s income shows that in a one-year period he may be expected to earn \$25,927.00. CSSD has correctly calculated support to be \$644 per month for three children.

IV. Conclusion

Mr. W. has not met his burden of proving that CSSD's decision is in error. CSSD has correctly calculated Mr. W.'s support obligation to be \$644 per month for three children.

V. Order

IT IS HEREBY ORDERED that Mr. W.'s monthly support obligation be set at \$644 for three children, effective April 1, 2008. All other provisions of the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on October 27, 2008, shall remain in effect.

DATED this 11th 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 2nd day of March, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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