

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

IN THE MATTER OF)
)
 H. D.) Case No. OAH-09-0108-CSS
) CSSD Case No. 001114815

DECISION & ORDER

I. Introduction

The obligor, H. D., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on January 28, 2009. Mr. D. appeared by telephone at a formal hearing held on March 16, 2009. The custodian, J. H., did not appear. Andrew Rawls represented CSSD by telephone. The child is J. D. (DOB 00/00/1991).

Mr. D.'s child support obligation is set at \$202 per month for one child in accordance with CSSD's most recent calculations.

II. Facts

Mr. D.'s previous support amount had been set at \$50 per month for one child. Ms. H. requested a modification, and CSSD issued a Notice of Petition for Modification on August 26, 2008. Mr. D. earned \$8,627.94 in 2008 working for Nana Management Services, but he stopped working for Nana sometime in October or November of 2008. Mr. D.'s total wages for 2008 were \$11,324.79. Based on this amount of wage income plus a permanent fund dividend, CSSD calculated Mr. D.'s support obligation to be \$202 for one child, effective September 1, 2008. J. will emancipate in September of 2009.

Determining Mr. D.'s employment situation was a somewhat confused endeavor at the hearing. Mr. D. seemed to be testifying truthfully to the best of his ability, but there were a number of conflicting statements in his testimony that were not resolved by further questioning, particularly regarding the times at which he had worked at various jobs. At some point, Mr. D. had been working on the North Slope doing kitchen work, but after about a month and a half he quit, was terminated, or resigned from this job. It is unclear whether this job was in 2007 or 2008. At one point Mr. D. stated that he was terminated because the employer found out about his criminal history, but at other points he stated that he might be able to get this job back if there were positions open. In 2008 Mr. D. had been working for Nana Management until sometime in the fall. Mr. D. either was terminated from this job or he quit or he resigned (Mr. D. drew a distinction between quitting and resigning, stating that he did not quit the job but rather resigned.

The basis for the distinction is unclear). Mr. D. stated that he stopped working for Nana Management because he had planned to take a job as a substance abuse counselor, but for some reason that did not work out.

It is difficult to tell to what extent Mr. D. has been trying to get back his job at Nana Management. Mr. D. testified that he had tried to call “the people” but they never called him back. He added that they had called him back one time, but there was a bad connection and they did not try to call him again.

Mr. D. testified that to get his old job back (it was unclear which old job this was) he will need to regain his driver’s license, which he lost because of a conviction for driving while intoxicated in 1991. Mr. D. stated that he is “working with Voc. Rehab. to help me get my license back” and that “they are going to pay my SR-22 and all that stuff so I can get my license back.” Mr. D. stated that he was really trying to accomplish this goal, but he has been told that his license has been suspended until 2012, “so they’re really stuck on something there.” Mr. D. hopes to have someone vouch for the fact that he has been through treatment after being released from seven years of incarceration in 2006, so that he can get his license back sooner.

Mr. D. lives with his girlfriend and their biological child, who is one and a half years old, in No Name Village. Mr. D.’s girlfriend does not work or have other income. Mr. D. stated that he did not engage in subsistence activity because he is on felony parole and is not allowed to use a firearm. He testified that the cost of living in No Name Village is higher than in the cities, including in Kotzebue.

Mr. D. pays \$300 per month for rent, but he is three months behind and has been served notice that he may have to move, though he has nowhere else to go. His water and sewer bill is \$80.00 per month, but the total amount due at the time of the hearing was \$1,040. His telephone bill is about \$42.00 per month. On March 9, 2009, Mr. D. paid \$999.00 for stove oil, though his average monthly expenditure is unclear. Mr. D. owes one or two hundred dollars on his Nordstrom credit card, but he has not been making payments. He owes some money on a J.C. Penney card as well; Mr. D. was not sure how much, but he thought the credit limit was \$200.00. Mr. D. testified that at this point his household survives by receiving \$550 per month in food stamps.

There is no evidence in the record about the custodian’s financial situation. Mr. D. testified that the cost of living is not as high in the area in which the custodian lives as it is where Mr. D. lives.

III. Discussion

For one child in primary custody, child support is generally calculated as twenty percent of the obligor's adjusted income from all sources.¹ Mr. D.'s support obligation, based on the amount of money he earned in 2008, should normally be set at \$202 per month for one child.²

Child support may be varied from the standard formula when there is clear and convincing evidence that manifest injustice would result if the amount is not varied.³ At a formal hearing, the person who requested the hearing has the burden of proving that the division's decision was in error.⁴

It is clear that Mr. D.'s household is currently in very tight circumstances. Until Mr. D. begins working again, times will probably be hard for all of Mr. D.'s children, regardless of the amount of support set for J.'s support.

Despite Mr. D.'s current state of financial hardship, the case should be viewed from a broader perspective. Mr. D.'s support obligation has been set at the lowest possible amount for a number of years. There is only about six months left before J. emancipates. Mr. D.'s support obligation might extend beyond that date if J. remains in school, but either way there is very little time left that Mr. D. will be required to support J., and it appears the custodian has been providing most of her support until now.

CSSD should consider adjusting its schedule for collecting support from Mr. D., so that after he begins working again he has some time to stabilize his household. But while Mr. D. is undergoing financial hardship at the moment, the evidence is not "clear and convincing" that "manifest injustice" will result if Mr. D. is required to eventually pay support in accordance with the level of income he was able to earn last year.

IV. Conclusion

Mr. D.'s support obligation for J. should be set at \$202 per month, based on Mr. D.'s actual earnings in 2008, in accordance with CSSD's most recent calculations.

¹ Civil Rule 90.3(a).

² Exhibit 7.

³ Civil Rule 90.3(c).

⁴ 15 AAC 05.030(h).

V. Order

IT IS HEREBY ORDERED that Mr. D.'s child support obligation be set at \$202 per month for one child, effective September 1, 2008. All other terms of the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on January 28, 2009, shall remain in effect.

DATED this 6th day of April, 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 27th day of April, 2009.

By: Signed - Terry L. Thurbon for
Signature
Dale A. Whitney
Name
Administrative Law Judge
Title

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