

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

IN THE MATTER OF)
)
 G. H.) Case No. OAH-09-0577-CSS
)
 _____) CSSD Case No. 001157262

DECISION & ORDER

I. Introduction

The obligor, G. H., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on September 21, 2009. Mr. H. appeared by telephone at a hearing held on November 16, 2009. Erinn Brian represented CSSD by telephone. The custodian, C.H., appeared in person in Juneau. The child is W.H.

Mr. H.'s child support obligation is set at \$310 per month for one child.

II. Facts

Mr. H. is twenty-three years old. He was raised in No Name City and graduated from high school there. Mr. H.'s parents still live in No Name City.

Mr. H. works in No Name City during the summer tourist season from May through September for the No Name City Fish Company as a waiter and bartender. In 2009 Mr. H. earned \$13,862.25, including reported tips. For the off season during the winter, Mr. H. is in Portland, Oregon, where he is attending Portland Community College. Mr. H. has been attending community colleges in Portland and also in No Name, Oregon, on a varying schedule for the last few years, but he estimates he still has a year to go before earning his associates degree. After that, Mr. H. plans on enrolling in a university to complete a bachelor's degree. While he is interested in some kind of a pre-law program, Mr. H. has yet to determine a major.

During the winter after the cruise ship season ends, there is no work available for Mr. H. in No Name City. Mr. H. explained that he tried going to school in Fairbanks, but did not find the climate conducive to studying. In Oregon, Mr. H. has worked in the past for a ballet company, but he is not currently working at all. Mr. H. testified that he has applied for several restaurant and bar jobs, but has not heard anything back.

Currently, Mr. H. is sharing an apartment and paying \$450 per month as his share of the rent. Mr. H. owns a 2008 pickup that he bought in January of 2008 for about \$25,000. Mr. H. still owes about \$9,000 on this vehicle, although he has made payments in advance until May of 2010. Mr. H.'s father pays for the insurance on the truck. While he is in No Name City in the summer, Mr. H. stays with his parents at their house.

III. Discussion

Child support for one child is properly set at twenty percent of the obligor's annual income, after adjustments have been made for various deductions such as taxes and retirement contributions.¹ Income includes the obligor's income from all sources.² If an obligor is voluntarily and unreasonably unemployed or underemployed, income may be imputed based on the obligor's ability to earn, based on the parent's work history, qualifications, and job opportunities.³

The principal issue in this case is whether income should be imputed to Mr. H. during the winter months when he is in Oregon, and if so at what rate. The fact that Mr. H. is attending school is laudable, and will most likely increase his employability and earning potential at some point in the future. However, at this time Mr. H.'s career goals have not coalesced to the point that W. could expect Mr. H.'s education to result in an increase in support later in his minority that would outweigh the intervening years of reduced support while Mr. H. attends school. From W.'s perspective, Mr. H.'s most productive approach would be to work full time year-round.

Mr. H. testified that he has been unable to find work in Portland during the winter, but it also appears that his efforts have not been vigorous. Mr. H. testified that he applied for work at a few places, but did not hear back. Even if Portland has one of the highest unemployment rates in the country during recessionary times, it is difficult to believe that Mr. H. could not find some kind of work. While he might not earn the amounts he is accustomed to earning as a bartender, it does not seem unreasonable, absent further evidence, to expect minimum wage employment even in Portland.

If Mr. H. is unable to find employment in Portland, it is not unreasonable in his case to look elsewhere. As a student living a fairly mobile lifestyle, Mr. H. is in a position to relocate as necessary in order to support himself and his child. The custodian testified that as a teenager with only a G.E.D., she has been able to remain employed full-time and maintain her own apartment in Juneau. The decision where to live and what kind of lifestyle to enjoy is entirely Mr. H.'s, and there is no basis for criticism. However, child support should be calculated based on the income Mr. H. would have if making reasonable best efforts to support his child.

¹ Civil Rule 90.3(a).

² Civil Rule 90.3(a)(1).

IV. Conclusion

In the most recent summer season, Mr. H. earned \$13,862.25. Oregon's minimum wage is \$8.40 per hour. If Mr. H. worked forty hours per week for the approximately 24 weeks he is not working in No Name City, he would earn \$8,064. Annual income of \$21,726 results in a child support obligation of \$310 per month for one child.⁴ Support should be set accordingly.

V. Order

IT IS HEREBY ORDERED that Mr. H.'s child support obligation be set at \$310 per month for one child effective February 1, 2009. All other terms of the Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division on September 21, 2009 shall remain in effect.

DATED this 19th day of November, 2009.

By: Signed _____
DALE WHITNEY
Administrative Law Judge

³ Civil Rule 90.3(a)(4).

⁴ See attached Exhibit A. This support amount is conservative. The record does not contain a reliable accounting of the support Mr. H. receives from his parents. Mr. H. testified that his father pays for his education and pays the insurance for his truck. The custodian testified that Mr. H. actually works for his parents during the summer; it is not clear if No Name City Fish Company is a family business, or what other benefits Mr. H. might receive from the company or his parents. Because there is inadequate evidence to include family support, or unreported tip income, support is based only on actual reported income plus minimum wage for times Mr. H. is not working. In the event of any modification, further inquiry may be appropriate.

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 18th day of December, 2009.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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