

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

IN THE MATTER OF:)

J. A. A.)

) OAH No. 10-0038-CSS

) CSSD No. 001148279

DECISION AND ORDER

I. Introduction

The obligor, J. A. A., appeals an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on December 23, 2009. The Obligee child is J., who is three years old.

The formal hearing was held on February 17, 2010 and March 8, 2010. Mr. A. appeared in person for both proceedings; the custodian, T. A. M., appeared in person at the first hearing. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on March 22, 2010.

Based on the record as a whole and after careful consideration, Mr. A.’s child support is set at \$130 per month for November and December 2007; \$165 per month for all of 2008 and \$196 per month for January 2009 forward.

II. Facts

A. History

After J. began receiving Medicaid benefits, CSSD initiated paternity proceedings against Mr. A.¹ After genetic test results showing Mr. A.’s probability of paternity of J. is 99.99%,² CSSD issued an order establishing his paternity of the child.³ On October 21, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. A.⁴ He requested an administrative review but did not provide income information.⁵ On December 23, 2009, CSSD issued an Amended Administrative Child Support and Medical Support Order that set Mr. A.’s

¹ Exh. 1.

² Exh. 3 at pg. 3.

³ Exh. 4.

⁴ Exh. 5.

⁵ Exh. 6.

ongoing child support at \$262 per month, with arrears of \$5,860 for the period from November 2007 through December 2009.⁶ Mr. A. appealed on January 15, 2010, asserting he is a seasonal cannery worker and he supports prior children in the Philippines and also pays support for an older child.⁷

B. Material Facts

The obligor, Mr. A., is from the Philippines. He has been in this country for many years, working primarily as a seasonal cannery worker. He is currently working as a dishwasher in a large medical facility, where he earns \$10 per hour for a 40 hour work week. In 2007, Mr. A. received income totaling \$18,204.57, including wages, the PFD and unemployment benefits.⁸ In 2008, Mr. A. received total income of \$19,716.09, which includes his income from wages, the PFD and unemployment benefits.⁹ In 2009, Mr. A. received total income of \$21,339.62, which includes wages, the PFD and unemployment benefits.¹⁰

Mr. A.'s wife joined him from the Philippines in 2007 and they live in Anchorage with their youngest child, M., who is one year old. She has significant medical problems and is currently receiving a disability payment of \$449 per month from Social Security, which helps defray her expenses. In addition to M., Mr. A. and his wife have three older children who range in age from nine through 18 years of age. These children remain in the Philippines and live with Mrs. A.'s father while they are attending school. Mr. A. sends between \$250 and \$400 per month to his wife's father for the children's expenses and school tuition. For example, in November and December 2007, Mr. A. sent \$1,525 to the Philippines for their support; in 2008, he sent \$3,210 for their support; and in 2009, he sent \$4,600 for their support.¹¹ This averages out to be \$381.25 per month for 2007, \$267.50 per month in 2008, and \$383.33 per month in 2009.

In addition to the children listed above, Mr. A. pays support through CSSD for a prior child named J. He paid \$363 per month in 2007 and 2008, and \$200.76 per month and 2009 and so far in 2010. These deductions, when inserted into child support calculations utilizing Mr. A.'s

⁶ Exh. 8.
⁷ Exh. 9.
⁸ Exh. 12.
⁹ *Id.*
¹⁰ *Id.*
¹¹ Exh. A.

income for each year at issue, result in support amounts of \$130 per month for November and December 2007; \$165 per month for 2008; and \$196 per month for January 2009, forward.¹²

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹³ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. A parent who supports an older child in the home is entitled to an additional deduction.¹⁴ Usually, the amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.¹⁵ In this case, because Mr. A. sends cash payments to his father-in-law to support his older children in the Philippines, the money he sends for their support should be used to determine the amount of his deduction from income.

As the person who filed the appeal in this case, Mr. A. has the burden of proving by a preponderance of the evidence that the child support amount in CSSD's Amended Administrative Child Support and Medical Support Order is incorrect.¹⁶

CSSD acknowledged during the hearing that Mr. A. is entitled to a deduction for supporting his prior children in the Philippines and for paying support through CSSD for J. After the hearing, CSSD submitted revised child support calculations that show Mr. A.'s child support should be set at \$130 per month for November and December 2007, \$165 per month for 2008, and \$196 per month for January 2009, forward.

IV. Conclusion

Mr. A. met his burden of proving that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). His actual income and deductions for 2007 through the present yield child support amounts of \$130 per month for November and December 2007, \$165 per month for 2008, and \$196 per month for January 2009, forward. These figures are correct and should be adopted.

¹² Exh. 13.

¹³ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁴ Civil Rule 90.3(a)(1)(C).

¹⁵ *Id.*

¹⁶ 15 AAC 05.030(h).

V. Child Support Order

- Mr. A. is liable for child support for J. in the amount of \$130 per month for November and December 2007, \$165 per month for 2008, and \$196 per month for January 2009, forward.
- All other provisions of the December 23, 2009, Amended Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 12th day of April, 2010.

By: Signed
Kay L. Howard
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 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 30th day of April, 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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