

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

IN THE MATTER OF:)
)
 M. A. T.) OAH No. 10-0291-CSS
) CSSD No. 001160956
_____)

DECISION AND ORDER

I. Introduction

The obligor, M. A. T., appeals an Amended Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 7, 2010. The obligee children are A. and C. T., both 18 years old, S. T., age 15, and R. T., age 13. The custodian is Y. M. W.

A hearing was held on June 30, 2010. Child Support Specialist Andrew Rawls appeared in person for CSSD. Mr. T. and Ms. W. both appeared by phone. Based on the evidence in the record and the testimony at the hearing, CSSD's order setting Mr. T.'s support obligation is upheld.

II. Facts

A. Background

An Administrative Child Support and Medical Support Order was issued on March 5, 2010.¹ The support obligation was set at the statutory minimum of \$50 per month for four children. Mr. T. requested an administrative review of that order.² An Amended Administrative Child and Medical Support Order was issued on May 12, 2010.³ This order also set Mr. T.'s support obligation at \$50 per month. Mr. T. appealed that order stating

I have yet to be able to receive (from Ms. W.) the needed information to clarify my ability and responsibility to pay according to the law, and verify my medical condition, and financial status.^[4]

Prior to the hearing, Mr. T. also filed a Motion to Compel asking that Ms. W. be required to provide him with various records to assist him in answering questions for CSSD.

1 Exhibit 1.
2 Exhibit 2.
3 Exhibit 4.
4 Exhibit 5.

B. Material Facts

Mr. T. testified that he is currently incarcerated with an unknown release date and only able to earn \$0.50 per hour. He does not expect to be eligible for a Permanent Fund Dividend check. He stated that prior to his incarceration he did provide for his children. He testified sincerely that he would like to be able to continue providing for the children and would do so but for his present circumstances.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁵ 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." The person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.⁶

The first matter addressed at the hearing was Mr. T.'s motion to compel. It was explained to Mr. T. that the child support obligation was set at the minimum amount allowed by law.⁷ The only exceptions to this minimum are if there is either extended visitation⁸ or shared physical custody.⁹ Neither of these is possible at this time because of Mr. T.'s incarceration. His motion to compel was orally denied because there was no additional information that Mr. T. could provide that would change his child support obligation below the minimum amount set in the Amended Administrative Child and Medical Support Order.

The testimony at the hearing also established that there was no basis for increasing Mr. T.'s support obligation. He is not currently earning enough income to establish an obligation of more than \$50 per month. With four children, Mr. T.'s support obligation would be 36% of his adjusted income.¹⁰ \$600 per year (\$50 per month) is 36% of an annual income of \$1,667. Mr. T. would need to earn more than that amount after taxes before his support obligation would be increased above \$50 per month. Since this is not reasonably likely while he is incarcerated,¹¹ an upward adjustment of the support order is not appropriate.

⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁶ 15 AAC 05.030(h).

⁷ Civil Rule 90.3(c)(3).

⁸ Civil Rule 90.3(a)(3).

⁹ Civil Rule 90.3(b).

¹⁰ Civil Rule 90.3(2).

¹¹ There was no evidence that Mr. T. has income from any other source that could be used in calculating his total income. *See* Civil Rule 90.3, Commentary III.A.

IV. Conclusion

CSSD correctly calculated Mr. T.'s child support obligation at \$50 per month for four children.

V. Child Support Order

- The Amended Administrative Child and medical Support Order of May 12, 2010 remains in full force and effect as of June 1, 2010.

DATED this 1st day of July, 2010.

By: Signed
 Jeffrey A. Friedman
 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 19th day of July, 2010.

By: Signed
 Signature
Jeffrey A. Friedman
 Name
Administrative Law Judge
 Title

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