

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

IN THE MATTER OF	)	OAH No. 10-0173-CSS
D. A. W.	)	CSSD No. 001158911
	)	
_____	)	

**DECISION AND ORDER**

**I. Introduction**

On May 4, 2010, a formal hearing was held to consider the child support obligation of D. A. W. (Obligor) for the support of his child, H. (Obligee).<sup>1</sup> Mr. W. participated in the hearing. He was represented by his attorney, Loren K. Stanton. H.'s mother, J.V., participated. J. V.'s mother, C. V., also participated.<sup>2</sup> Andrew Rawls, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

This case is Mr. W.'s appeal of the Division's order establishing his monthly child support obligation for his child, H. Because Mr. W. has had primary custody of H. or lived with her since April of 2009, Mr. W.'s child support arrears should be set at \$0 per month. Beginning in May of 2010, Mr. W.'s monthly ongoing child support should be set at \$0 per month. Ongoing child support can be modified if the custody situation changes, and Mr. W. no longer has primary custody of H., or a new court order changes the current custody situation, but such an outcome seems unlikely at the present time.

**II. Facts**

Ms. V. requested public assistance for her child, H., beginning in April 2009.<sup>3</sup> Paternity is not in dispute.<sup>4</sup> Mr. W. is named as H.'s father on her birth certificate.<sup>5</sup>

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170.

<sup>2</sup> J. V.'s mother, C. V. explained that she helps J. V. with her business affairs because of J. V. having suffered a serious head injury.

<sup>3</sup> Division's Pre Hearing Brief, page 1 & Ex. 5, page 8.

<sup>4</sup> Division's Pre Hearing Brief, page 1 & Recording of Hearing.

<sup>5</sup> Division's Pre Hearing Brief, page 1.

The Division served Mr. W. with an Administrative Child and Medical Support Order on December 30, 2010.<sup>6</sup> Mr. W. requested an administrative review of that order.<sup>7</sup>

The Division issued an Amended Administrative Child and Medical Support Order on February 24, 2010.<sup>8</sup> The Division set Mr. W.'s monthly ongoing child support for H. at \$606. The order also established arrears in that monthly amount beginning in April of 2009.<sup>9</sup> Mr. W. requested a formal hearing.<sup>10</sup>

At the hearing, Mr. W. and other witnesses provided the history of Mr. W. and Ms. V.'s custody of H.<sup>11</sup> Mr. W. explained that H. has been staying with him more than 70% of the overnights since April of 2009. At the hearing, Ms. V. testified that she believed that she had custody of H. for 50% of the overnights since April of 2009.<sup>12</sup> Evidence was also provided that indicates that Ms. V. will probably spend even more time in treatment or in jail in the next year.<sup>13</sup> Mr. W. is seeking a court order for primary custody of H.<sup>14</sup>

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations at exhibit 5, page 7 and the information used in these calculations are correct and most accurately reflect Mr. W. 2009 income and his current earning capacity.<sup>15</sup> However, I also find that it is more likely than not that Mr. W. had primary custody of H. since April 2009, presently exercises primary custody, and will continue to do so for the foreseeable future.<sup>16</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Mr. W., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>17</sup>

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<sup>6</sup> Ex. 1.

<sup>7</sup> Ex. 2.

<sup>8</sup> Ex. 5.

<sup>9</sup> Ex. 5.

<sup>10</sup> Ex. 6.

<sup>11</sup> Recording of Hearing.

<sup>12</sup> Recording of Hearing & Ex. 6, pages 6-8.

<sup>13</sup> Recording of Hearing & Ex. 6, pages 13-25

<sup>14</sup> Recording of Hearing.

<sup>15</sup> Recording of Hearing.

<sup>16</sup> Recording of Hearing & Ex. 6, pages 6-12.

<sup>17</sup> Alaska Regulation 15 AAC 05.030(h).

Mr. W. showed that H. has been in his primary custody during the period covered by this order. Mr. W.'s memory was fairly clear, and his testimony was supported by other witnesses. The evidence of Ms. V.'s the recent history of court ordered treatment and incarcerations for probation violations as the result of substance abuse also supported Mr. W.'s assertion that H. has been living with him. Although this testimony was contradicted by Ms. V., her testimony was not particularly plausible given her extended absences during the periods covered by this order, nor was her testimony credible. Her testimony contradicted her own letter of April 29, 2010, in which she asserted that she had custody of H. "much more" than Mr. W. Ms. V.'s testimony was vague and general, and unsupported by testimony of others with first-hand knowledge of the custody situation. Although Ms. V.'s mother indicated in her letter of April 29, 2010 that she believed Mr. W. did not have primary custody, Mr. W.'s testimony and the testimony of other witnesses indicated that Ms. V.'s mother has not been living in Alaska consistently during the period covered by this order.

Child support is calculated using the shared custody formula when a child resides with a parent at least 30, but no more than 70 percent of the overnights.<sup>18</sup>

At the hearing, Mr. W. explained that Ms. V. had agreed to an informal custody arrangement of splitting custody of H. evenly, but that since April of 2009, the most usual arrangement was for H. to spend Monday, Tuesday Wednesday and Thursday nights with him and the weekend with Ms. V. Mr. W. and other witnesses also testified that since April of 2009, Ms. V. has been incarcerated or in treatment in other towns. During Ms. V.'s absences, H. has been living with Mr. W. As a result, Mr. W. had H. in his home or his sister's home more than 70 percent of the overnights.

Ms. V. has been charged with a recent probation violation after several earlier violations in a case with a sentence that includes several months of suspended jail time, which may soon be imposed. H. is already 16 years old, so there are less than two years of ongoing child support obligation left for her parents. Ms. V. has been not been successful in following the conditions of her probation or avoiding substance abuse. Mr. W.'s petition for primary custody may be granted. Even shared custody before H. becomes an adult appears to be unlikely, based on the evidence in the record. Ms. V. will probably continue to have a fair amount of visitation when she is able to, but it is unlikely that she will have H. with her for 111 overnights per year in the

next two years. If, however, the custody situation changes, the parties should request a modification.

**V. CHILD SUPPORT ORDER**

The Division’s Amended Administrative Child and Medical Support Order issued on January 27, 2010 is amended as follows, but all other provisions of that order remain in effect:

1. Mr. W.’s ongoing child support for H. is set in the monthly amount of \$0 effective June 1, 2010, based on his having primary custody of H..
2. Mr. W.’s child support arrears for H. are set in the monthly amount of \$0 for April 2009 through May of 2010, based on his having primary custody of H. during that period.

DATED this 7th day of May, 2010.

By: Signed  
Mark T. Handley  
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 4<sup>th</sup> day of June, 2010

By: Signed  
Signature  
Jerry Burnett  
Name  
Deputy Commissioner  
Title

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

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<sup>18</sup>Alaska Civil Rule 90.3(f).