

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

IN THE MATTER OF:)
)
D. A. J.)
)
) OAH No. 10-0286-CSS
) CSSD Case No. 001159118
_____)

CORRECTED DECISION AND ORDER¹

I. Introduction

This case concerns the obligation of D. A. J. for the support of S. A. J.-M. The custodian of record is C. M. M.

On May 12, 2010, the Child Support Services Division issued an amended administrative child support order establishing a support obligation of \$332 per month. Mr. J. filed an appeal and requested an administrative hearing.

The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a hearing on June 29, 2010. Mr. J. appeared and provided testimony. Andrew Rawls represented the division. Ms. M. was not available at her telephone number on record, and she did not respond to post-hearing messages left by the division by email and telephone.

Based on the testimony at the hearing and the evidence in the record, arrears are set at \$50 per month through March 31, 2010; beginning April 1, 2010, arrears and ongoing support are set at \$332 per month.

II. Facts

Since 2009, D. A. J. has been employed at C. F., Inc., as a delivery truck driver.² In 2009 his wage was \$10 per hour, with overtime at \$15 per hour; his current wage is \$12 per hour, with overtime at \$18 per hour. In 2009 Mr. J. earned a total wages of \$23,659, and he did not receive an Alaska Permanent Fund dividend.³ He received an Alaska native corporation dividend of \$1,115.⁴ His total annual income was \$24,773. His anticipated 2010 income is within 15% of

¹ A typographical error on page 4 has been corrected (“\$432” in the Conclusion changed to “\$332”).

² See Ex. 8, p.10.

³ Ex. 8, p. 1.

⁴ Ex. 9, p. 7.

his 2009 income.⁵ In 2010, Mr. J.'s monthly after-tax take home pay, excluding any obligation for child support, is anticipated to average about \$1,827.⁶

Mr. J. has three children, two older than S. He is subject to two child support orders on behalf of his older children, both set at \$50 per month.⁷ Mr. J. lives with his girlfriend, who has no children and is presently unemployed and has no income. His monthly household living expenses total about \$1,682, including rent (\$950), food (\$100), telephone (\$77), refuse (\$37), personal care (\$50) and transportation (\$468).⁸ As a condition of probation Mr. J. must take a polygraph examination every three months that costs \$315; if he fails the examination he is responsible for its cost, and he has failed the examination on multiple occasions.⁹ Mr. J. believes he could afford to pay child support in the amount of \$300 per month, exclusive of arrears.¹⁰ In addition to child support arrearages, he has personal debts of more than \$3,000 for telephone bills and parking tickets.¹¹

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,¹² that is, income after allowable deductions for such things as taxes and contributions to a retirement plan.¹³ In this case, there is no dispute regarding Mr. J.'s presumptive support obligation of \$332 per month. Mr. J. asserted in his request for a hearing that he cannot afford to pay the amount ordered because of his pre-existing support obligations and his ongoing monthly expenses.

The support obligation may be reduced if the amount as calculated under 15 AAC 125.070 would result in a manifest injustice due to unusual circumstances.¹⁴ The obligor must

⁵ Mr. J. received a raise from \$10 per hour to \$12 per hour, but he testified that he is not receiving as much overtime as in 2009. Through May 15, 2010, his average monthly wage was \$2,255.66, which is less than 15% greater than his average monthly wage in 2009. *See* Ex. 10, p. 8.

⁶ For the first 4.5 months of 2010, Mr. J.'s gross wages were \$10,150.48. Deductions for taxes (income tax, Social Security, Medicare, and unemployment insurance) totaled \$1,928.25. His net after-tax income was therefore \$8,222.23, or \$1,827.16 per month. *See* Ex. 10, p. 8.

⁷ *See* Ex. 10, p. 1 (CSSD Nos. 001109632 & 001095240); Ex. 10, pp. 13-18 (Tlingit-Haida Tribal Child Support No. 07xxx for D. J.).

⁸ Mr. J. testified that he owns a used pickup truck that costs about \$250 per month in maintenance costs, with monthly insurance of \$68 and monthly fuel cost of \$150.

⁹ *See* Ex. 10, pp. 2, 12; Testimony of D. J.

¹⁰ Testimony of D. J.

¹¹ Testimony of D. J.

¹² 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

¹³ 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

¹⁴ 15 AAC 125.075(a)(2).

provide clear and convincing evidence of manifest injustice.¹⁵ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.¹⁶

Mr. J.'s current monthly household expenses (\$1,682) are about \$150 less than his current monthly after-tax income exclusive of child support (\$1,827). Thus, his monthly after-tax income is sufficient to meet his current monthly expenses and his existing child support obligation for his two older children. Moreover, Mr. J. testified that he would be able to make payments of \$300 per month. Mr. J. did not prove by clear and convincing evidence that it would be manifestly unjust to impose an ongoing child support obligation in this case of \$332, in addition to his existing ongoing support obligation of \$50 per month in two other cases, for a total monthly ongoing support obligation of \$432 per month.

However, Mr. J.'s current after-tax income is insufficient to meet his obligation for arrears in addition to his ongoing support obligation. In establishing pre-order arrears, "unfairness may result from rigid application of the rule [governing calculation of child support]."¹⁷ Where substantial pre-order arrears have accrued, imposition of the full presumptive support obligation for the entire period of pre-order arrears may be manifestly unjust, depending on the circumstances.¹⁸

In this particular case, a substantial portion of the pre-order arrears accrued from May 1, 2009 through March 31, 2010, during a time that Mr. J. was contesting paternity. During that time, Mr. J. was subject to income withholding of about \$300 per month for his two older children.¹⁹ After the order in this case was established, monthly increased to more than \$500 per month, leaving Mr. J. with net monthly income, after taxes and child support, of about \$1,298.²⁰ Only after making substantial changes in his financial arrangements, such as by obtaining a contribution towards rent from his companion, could Mr. J. pay his household expenses plus his entire support obligation, including arrears on all orders,²¹ and even then he would still be unable

¹⁵ 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

¹⁶ *See* 15 AAC 125.080.

¹⁷ Civil Rule 90.3, Commentary at VI(E).

¹⁸ *See, e.g., In Re B.B.*, OAH No. 09-0273-CSS (Department of Revenue 2009); *In Re A.W.B.*, OAH No. 09-0184-CSS (Department of Revenue 2009); *In Re Y.D.*, OAH No. 09-0105 (Department of Revenue 2009); *In Re J.E.C.*, OAH No. 09-0084-CSS (Department of Revenue 2009); *In Re G.S.*, OAH No. 06-0367-CSS (Department of Revenue 2006); *In Re D.J.M.*, OAH Nos. 04-0157/0158-CSS (Department of Revenue 2005).

¹⁹ *See* Supplemental Exhibit (Coastal Fuel, Inc. Detail Deduction History Report).

²⁰ Mr. J.'s average take home pay, after taxes, is about \$1,827. Withholding in May totaled \$529.89 (\$1,827-\$529 = \$1,298).

²¹ If Mr. J.'s living partner paid 50% of the rent (\$475), his monthly household expenses would be about \$1,207 (\$1,682 - \$475 = \$1,207).

to meet unanticipated expenses, such as the cost of a polygraph test or medical bills. Moreover, his substantial existing debts would remain unpaid.

Because the arrears at issue in this case are primarily for a period of time when S. was receiving public assistance, it appears that a reduction in the arrears will not adversely affect the child.²² In light of all of the circumstances, it would be manifestly unjust to impose the full presumptive obligation for the entire period of arrears. Consistent with the support obligation imposed during the period of pre-order arrears in the other two cases, a minimum support order will be imposed for that time.

IV. Conclusion

There is not clear and convincing evidence of facts under which an ongoing support obligation of \$432 per month is manifestly unjust. However, there is clear and convincing evidence that imposition of the presumptive amount for the entire period of pre-order arrears would be manifestly unjust.

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated May 12, 2010, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated May 12, 2010, is **AFFIRMED**:

1. Mr. J.'s arrears are set at \$50 per month from May 1, 2009, through March 31, 2010, and \$332 per month from April 1 through July 31, 2010.
2. Amended ongoing child support is set at \$332 per month, effective August 1, 2010.

DATED: August 17, 2010.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

²² Ms. Mantor did not respond to repeated requests from the division for information.

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 Corrected 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 17th day of August, 2010.

By: Signed
Andrew M. Hemenway
Administrative Law Judge

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