

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

IN THE MATTER OF	)	
M. L. R.	)	OAH No. 10-0378-CSS
	)	CSSD No. 001161184
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This case is Mr. M. L. R.'s appeal of the Alaska Child Support Service Division's order establishing his child support obligation for his child, I. This administrative order is intended to cover a period of arrears that will not be covered in the court child support order that is part of the parent's divorce proceedings. The court order will supersede the Division's order for all periods that overlap.

On August 16, 2010, a formal hearing was held to consider Mr. R.'s appeal of the Division's order.<sup>1</sup> The custodial parent, J. R., participated. Mr. R. also participated. Erinn Brian, Child Support Services Specialist, represented the (Division). The hearing was audio-recorded. The record closed on September 30, 2010.

After the record closed it was re-opened because the court had ordered genetic testing and issued an order explaining its intent to take up the issue of arrears for 2010. The results of genetic testing and the court's determination of the appropriate amount of monthly child support for 2010 were both relevant to Mr. R.'s appeal of the Division's Amended Administrative Child and Medical Support Order, so the record was held open to wait for the court's rulings on paternity and arrears for 2010. A series of status conferences were held to monitor the progress of the court proceedings. The parties reported that after genetic testing confirmed Mr. R. is I.'s father, paternity was no longer an issue, but that child support was taking longer to resolve.

On February 22, 2011, the Division filed a submission that included the latest calculations for arrears in 2010 that the Division had submitted in the court case. These calculations result in a monthly child support amount of \$363 per month.

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

Having reviewed the record in this case and after due deliberation, I concluded that the amounts set in the Division's Amended Administrative Child and Medical Support Order should be adjusted in accordance with the Division's latest calculations. Mr. R.'s ongoing child support from March 1, 2010 is set by court order. Mr. R.'s child support obligation for the months of January 2010 and February 2010 is \$363 per month. Mr. R.'s child support obligation from July 2009 through December 2009 is \$718 per month, which will be offset by the amounts that the Division has already collected, plus Mr. R.'s credits for direct payments of child support to Ms. J. R. of \$454 per month for the months of July 2009 through October 2009, totaling \$1,819.60, in accordance with the Division's Summary of Support Obligation at exhibit 17, page 1. However, as there is a court order indicating that the court intends to issue an order for child support arrears, the court order will supersede this administrative order for all the periods that are covered by the court's order.

## **II. Facts**

Ms. J. R. and Mr. R. were married, and both were living together with their child before they separated.<sup>2</sup> Ms. J. R. applied for the public assistance services for her child, I., in July of 2010.<sup>3</sup>

Paternity is no longer in dispute. Mr. R. was named as I.'s father on her birth certificate.<sup>4</sup> The Division issued an Administrative Child and Medical Support Order on March 11, 2010.<sup>5</sup> Mr. R. requested an administrative review.<sup>6</sup>

The Division issued an Amended Administrative Child and Medical Support Order on May 26, 2010. Mr. R.'s ongoing child support was set by court order. The Division's order set monthly arrears going back to July of 2009 totaling \$6,324.<sup>7</sup>

Mr. R. requested a formal hearing.<sup>8</sup> After the hearing, the Division filed new calculations as requested. These calculations take updated income information into account. These calculations result in monthly child support amounts of \$718 for 2009 and \$363 for 2010.<sup>9</sup>

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<sup>2</sup> Recording of Hearing.

<sup>3</sup> Exhibit 17.

<sup>4</sup> Recording of Hearing.

<sup>5</sup> Exhibit 2.

<sup>6</sup> Exhibit 3.

<sup>7</sup> Exhibit 6.

<sup>8</sup> Exhibit 4.

<sup>9</sup> Exhibits 15 & 20.

At the hearing, Mr. R. raised issues related to his direct payments of child support and the Division's withholding amounts from his pay.<sup>10</sup>

After the hearing, a scheduling order was issued setting the deadline for the Division to file a Post-Hearing Brief and a new Summary of Support Obligation and the deadline for the parties to file any response to the Division's submission that they wished to file. The Division timely complied with the order. The record closed on September 30, 2010.

After the record closed, it was re-opened because the court ordered genetic testing. The tests were positive and the Division filed its latest calculations for arrears in 2010 that the Division had submitted in the court case. These calculations result in a monthly child support amount of \$363 per month.

Based on the evidence in the record, I find that it is more likely than not that the Divisions calculations at exhibits 15 and 20 of Mr. R.'s monthly child support obligation for the periods covered by the Division's order in 2009 and 2010 are correct and that the income used in these calculations is correct. Based on the evidence in the record, I also find that there is clear and convincing evidence Mr. R. made \$454 per month in direct payments of child support to Ms. J. R. for the months of July 2009 through October 2009, totaling \$1,819.60.<sup>11</sup>

### **III. Discussion**

Mr. R. argued that his child support order should be lower than the amount set by the Division, and that he should be given credit for all his direct payments of support. In a child support hearing, the person who filed the appeal, in this case Mr. R. has the burden of proving by a preponderance of the evidence that the Division's order is incorrect. Mr. R. met his burden to show, and the Division agreed, that Mr. R.'s child support order should be adjusted. Although the custodial parent, J. R., testified that she had not received the direct payments of child support, her testimony was not in conflict with the documentation showing these payments that was provided by Mr. R.

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<sup>10</sup> Recording of Hearing.

<sup>11</sup> Recording of Hearing & Ex. 17.

Ms. J. R. also appears to take the position that because Mr. R. was receiving extra compensation as the result of his dependents that he should not receive credit for the direct payments of child support that he made to her.<sup>12</sup> Mr. R. is entitled to credit for these payments. Credits for direct payments of child support are allowed if the obligor provides clear and convincing evidence that the payments were made.<sup>13</sup>

#### **IV. CHILD SUPPORT ORDER**

1. Mr. R.'s ongoing child support for I. is covered by court order effective March 1, 2010.
2. Mr. R. is liable for child support arrears for I. in the monthly amount of \$363 for January 2010 and February 2010 and \$718 for the months of July 2009 through December 2009.
3. Mr. R.'s is entitled to credits for direct payments of child support to Ms. J. R. of \$454 per month for the months of July 2009 through October 2009 totaling \$1,819.60.
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for I.
5. Any order in the court case number 1JU-09-00941CI, will supersede this order to the extent that the court order covers the period of child support arrears in this order, that is, July 2009 through February 2010.
6. All other provisions of the Amended Administrative Child and Medical Support Order issued on May 26, 2010 remain in effect.

DATED this 22nd day of March, 2011.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>12</sup> Exhibit 12, page 4.

<sup>13</sup> Alaska Regulation 15AAC 125.465.

**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 9th day of April, 2011

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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