

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

IN THE MATTER OF	)	OAH No. 10-0441-CSS
M D C	)	CSSD No. 001158210
	)	
	)	

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**DECISION AND ORDER**

**I. Introduction**

On September 15, 2010, a formal hearing was held to consider the child support obligation of M D C (Obligor) for the support of his child, J (Obligee).<sup>1</sup> The custodial parent, E J, participated. Mr. C also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on October 6, 2010.

This case is Mr. C's appeal of the Division's order establishing his child support obligation for his child, J. Mr. C appealed because he had questions regarding the Division's calculations of his child support and because he has been unemployed since October of 2009.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that the amounts set in the Division's Amended Administrative Child and Medical Support Order should be adjusted in accordance with the calculations filed by the Division after the hearing at exhibit 11. These new calculations reduce Mr. C's arrears for 2008, 2009, and 2010, as well as his ongoing child support by giving a deduction from his income for supporting his older child in his home. Mr. C's arrears have also been adjusted to reflect updated income information provided by Mr. C after the hearing. Mr. C's ongoing child support is set at \$300 per month.

**II. Facts**

Ms. J applied for the public assistance for her child, J, when he was born in June of 2008. Paternity is not now in dispute. Mr. C paternity of J was established after genetic testing in an

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

administrative order that was not appealed.<sup>2</sup> The Division issued an Administrative Child and Medical Support Order on February 25, 2009.<sup>3</sup> Mr. C requested an administrative review.<sup>4</sup>

The Division issued an Amended Administrative Child and Medical Support Order on July 28, 2010. In this order, the Division set Mr. C's ongoing child support at \$375 per month. The order also set monthly arrears going back to August of 2008.<sup>5</sup> Mr. C requested a formal hearing.<sup>6</sup> Mr. C also provided information about his work history.<sup>7</sup>

At the hearing, Mr. C explained that he had been terminated from his job with F. E. in October of 2009, and has received unemployment benefits since a month following his termination. Mr. C has been applying for information technology jobs that pay between \$12 and \$15 per hour. Mr. C has not been hired but he believes that he will find employment. Mr. C lives with his wife, who earns about \$20,000 per year, and his two-year-old daughter, X, who he cares for while his wife is at work. X is a few months older than J.<sup>8</sup>

The Division's Amended Administrative Child and Medical Support Order based Mr. C's arrears for 2008 on his income reported on his 2008 tax return, without a deduction for supporting X. The Division's Amended Administrative Child and Medical Support Order based Mr. C's arrears for 2009 on his estimated 2009 income from reported earnings, without a deduction for supporting X. The Division's Amended Administrative Child and Medical Support Order based Mr. C's arrears for 2010 and his ongoing support on his estimated earning capacity using his last reported hourly wage of \$16.85, without a deduction for supporting X.<sup>9</sup>

After the hearing as requested, Mr. C provided a copy of X's birth certificate and his 2009 tax return and some tax forms to the Division. The Division provided new calculations. Because Mr. C was late in providing the birth certificate, the Division provided a set of calculations giving Mr. C a deduction from his income for supporting X in his home, but recommended using earlier calculations that did not include this deduction. After the Division received the birth certificate the Division filed it and recommended that its new calculations giving Mr. C a deduction from his income for supporting X in his home at exhibit 11 be used to

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<sup>2</sup> Exhibit 4 & Recording of Hearing.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 6.

<sup>5</sup> Exhibit 8.

<sup>6</sup> Exhibit 9.

<sup>7</sup> Exhibit 9.

<sup>8</sup> Recording of Hearing – Testimony of Mr. C.

<sup>9</sup> Exhibit 8.

set Mr. C's child support. These calculations used the 2008 and 2009 income information reflected on his tax returns and estimated income for 2010 and ongoing using Mr. C's estimated earning capacity as his last reported hourly wage of \$16.85.<sup>10</sup> At the hearing, Ms. J did not have an objection to these adjustments.<sup>11</sup>

Based on the evidence in the record, I find that it is more likely than not that these new calculations at exhibit 11 are correct and that the income used in these calculations is correct.<sup>12</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Mr. C has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>13</sup> Mr. C met his burden to show that Mr. C's child support order should be adjusted in accordance with the Division's latest calculations giving him a deduction from his income for supporting his older child, X, and using updated income information for his 2009 arrears.

A noncustodial parent's child support obligation should not be reduced or suspended during a period of temporary unemployment.<sup>14</sup> Although Mr. C has been unemployed for several months, he will probably find full-time employment again soon. It is also not clear whether Mr. C has stayed unemployed longer than he otherwise would have if he was not caring for X while his wife works. While this may have been a reasonable choice, it should not result in reduced child support for J.

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

1. Mr. C's ongoing child support for J is at \$300 per month effective November 1, 2010.
2. Mr. C is liable for child support arrears for J in the monthly amount of \$288 per month for the months of August 2008 through December 2008; \$264 per month for all of the months of 2009 and \$300 for the months of January 2010 through of October 2010.
3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for J.

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<sup>10</sup> Exhibit 11.

<sup>11</sup> Recording of Hearing – Testimony of Ms. J.

<sup>12</sup> Recording of Hearing & Ex. 11.

<sup>13</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>14</sup> See *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

4. All other provisions of the Amended Administrative Child and Medical Support Order issued on July 28, 2010 remain in effect.

DATED this 21<sup>st</sup> day of October, 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 9<sup>th</sup> day of November, 2010

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

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