

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

IN THE MATTER OF: )  
 )  
J. E. L. ) OAH No. 10-0508-CSS  
 ) CSSD Case No. 001159672  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of J. E. L. for the support of J.L. The custodian of record is D. M. V.

On September 1, 2010, the Child Support Services Division issued an amended administrative child support order establishing a support obligation for arrears from September 1, 2004, through May 31, 2010, in the amount of \$73,421.<sup>1</sup>

Mr. L. filed an appeal and requested an administrative hearing. The assigned administrative law judge conducted telephonic hearings on November 9 and December 8 and 22, 2010. Erinn Brian represented the division at all three hearings, and Mr. L. was represented by his attorney, Jody Reausaw. Ms. V. was not available at her telephone number of record at the first hearing, but she participated in the second and third hearings.

The primary legal issue in this case is whether to set arrears beginning in 2004, when Ms. V. filed a written application for services with the New Mexico child support agency, or beginning in 2009, when the New Mexico agency filed an interstate petition with the Alaska child support agency. This decision sets arrears beginning in 2004, but concludes that imposition of the amount as calculated under 15 AAC 125.070 for the entire period of arrears would be manifestly unjust. Arrears are set at \$300 through April, 2008, and thereafter in accordance with 15 AAC 125.070.

**II. Facts**

A. Procedural History

On August 7, 2004, D. V. filed a written application for services from the New Mexico child support agency.<sup>2</sup> Her written application informed the agency that paternity had been

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<sup>1</sup> Ex. 11.

<sup>2</sup> Ex. 13.

established by a signed acknowledgment.<sup>3</sup> The application stated that Mr. L.’s current mailing address was in Valdez, Alaska, provided an Alaska telephone number for him, and identified Valdez as the place of his current employment.<sup>4</sup> The application listed Mr. L.’s last known physical address as in Albuquerque, New Mexico, but also provided a physical address in British Columbia that was attributed to him.<sup>5</sup> The application form states, “[a]ny application for Child Support services will result in this agency taking action as needed to enforce support obligations.”<sup>6</sup>

The New Mexico agency opened an administrative child support case, No. 143859, on September 8, 2004.<sup>7</sup> The New Mexico agency sent the address that Ms. V. had provided for Mr. L. to the Federal Case Registry (FCR), in an attempt to obtain additional information regarding Mr. L.’s location, but was unsuccessful.<sup>8</sup> A New Mexico court proceeding to establish paternity, No. 2006-01896, referencing the agency’s case No. 143859, was initiated on May 9, 2006.<sup>9</sup> The court proceeding in No. 2006-01896 was dismissed for lack of prosecution on March 9, 2007.<sup>10</sup> A copy of the order of dismissal sent to Mr. L. was returned on April 16, 2007, and a summons was issued on May 23, 2007.<sup>11</sup>

On April 22, 2009, the New Mexico agency completed a transmittal form<sup>12</sup> for a petition to be filed in Alaska under the Uniform Interstate Family Support Act (UIFSA).<sup>13</sup> Ms. V. executed an affidavit and verified the UIFSA petition on April 30.<sup>14</sup> The New Mexico agency transmitted the petition to the Child Support Services Division, and on June 16, 2009, the

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<sup>3</sup> Ex. 13, p. 5.

<sup>4</sup> Ex. 13, p. 2.

<sup>5</sup> Ex. 13, pp. 1, 2.

<sup>6</sup> Ex. 13, p. 1.

<sup>7</sup> Ex. 14.

<sup>8</sup> Ex. 14 (noting addresses sent to FCR, with the result “FCR REJECTED”). Presumably, this means that the Federal Case Registry failed to provide a match for Mr. L. The Federal Case Registry is a national database maintained by the Federal Parent Locator System (FLPS) for use by state child support enforcement agencies. *See generally*, [www.acf.hhs.gov/programs/cse/newhire/fcr/fcr.htm](http://www.acf.hhs.gov/programs/cse/newhire/fcr/fcr.htm).

<sup>9</sup> Ex. 15.

<sup>10</sup> Ex. 15 (“RETURNED MAIL FILING RETURNED UNDELIVERED DISPOSTION ORDER LACK OF PROSECUTION MAILED JOHN ERIC L.- ATTACHMENT”).

<sup>11</sup> Ex. 15.

<sup>12</sup> Ex. 1, pp. 1-2.

<sup>13</sup> *See* NMSA §40-6A-301 *et seq.*; AS 25.25.101-.923. AS 25.25.401(a) provides that the division may issue a child support order if the individual seeking the order resides in another state, or in response to a petition from another state’s child support agency. AS 25.25.401(c) provides that an order will be issued under the division’s regulations. The division has adopted a regulation providing that UIFSA cases are processed under its standard provisions for establishing a support order. 15 AAC 125.720(a).

<sup>14</sup> Ex. 1, pp. 3-18.

division initiated this Alaska administrative proceeding, CSSD No. 001159672, by issuing a notice of paternity and financial responsibility.<sup>15</sup> The UIFSA petition referenced the New Mexico court case, No. 2006-01896 and the New Mexico administrative case, No. 143859.<sup>16</sup> The petition requested the establishment of a child support order beginning at birth and ongoing.<sup>17</sup> Mr. L. was served with the notice of paternity on September 10, 2009.<sup>18</sup> Mr. L. contested paternity, and an order establishing paternity was issued on December 24, 2009.<sup>19</sup> On March 26, 2010, the division issued an administrative support order establishing an ongoing support obligation in the amount of \$1,272 per month effective May 1, 2010, with arrears in the amount of \$75,732 for the period from September 1, 2004, through April 30, 2010.<sup>20</sup> Mr. L. requested an administrative review, and the division issued an amended support order on September 1, 2010, with no ongoing support obligation (because by that date J. had turned 18 and had graduated from high school) but setting arrears in the amount of \$73,421 for the period from September 1, 2004, through May 31, 2010.<sup>21</sup>

B. Material Facts

J. E. L. and D. M. V. were involved in a relationship from 1989 until 1993, and they lived together in New Mexico for two years. Their daughter, J., was born in 1991. Since the couple separated in 1993, J. has lived with her mother.

Mr. L. continued to live in New Mexico until 2002. He saw his daughter regularly until around 1999 or 2000, when Ms. V. became involved in another relationship and his contacts with J. became sporadic. Mr. L. was briefly married, but he divorced in 2004 and he has no other children than J. He has lived in Alaska since about 2004. Since leaving New Mexico he has had only occasional contact with J., by way of greeting cards, a visit by J. to Alaska with her paternal grandfather in 2005, one or two visits at her paternal grandmother's house in Canada, and, most recently, a visit at Mr. L.'s sister's wedding in June, 2007. Since leaving New Mexico Mr. L. has had no direct contact with Ms. V. except for two phone calls, in 2004 and 2007. His contacts

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<sup>15</sup> Ex. 2.  
<sup>16</sup> Ex. 1, p. 3.  
<sup>17</sup> Ex. 1, p. 3.  
<sup>18</sup> Ex. 2.  
<sup>19</sup> Ex. 5.  
<sup>20</sup> Ex. 7.  
<sup>21</sup> Ex. 11.

with J. largely have been arranged through his parents, who have been in regular contact with J. (Mr. L.'s father lives in Albuquerque and J. has visited him regularly).<sup>22</sup>

Beginning in December, 1993, Mr. L. made regular child support payments directly to Ms. V. in the amount of \$160 per month.<sup>23</sup> Mr. L. continued making regular payments in that amount until 1998, and sporadically in 1999 and 2000.<sup>24</sup> With the exception of a single payment of \$200 in June, 2001, Mr. L. has been unable to document any support payments to Ms. V. from October, 2000, until after August 7, 2004, when Ms. V. learned that Mr. L. was working in Alaska<sup>25</sup> and applied for services from the New Mexico child support services agency.<sup>26</sup> Mr. L. resumed making regular payments in December, 2004, in the amount of \$200 per month.<sup>27</sup> Around that time, the two spoke on the telephone and agreed to child support in the amount of \$300 per month.<sup>28</sup> Beginning in March, 2005, Mr. L. began making payments in the amount of \$300 per month. The payments continued until April, 2008.<sup>29</sup> Mr. L. has not documented any additional child support payments after April, 2008 until after he began making regular voluntary payments through the division in the amount of \$1,263 per month in September, 2010.<sup>30</sup> The total amount of his direct payments documented in the record from August, 2004, through May, 2010, is \$8,100.<sup>31</sup>

Mr. L. is a plumber. From 1993-2002, while living in New Mexico, his annual wages averaged about \$30,000 a year; his wages increased substantially, to around \$45,000 per year, after he left New Mexico in 2002.<sup>32</sup> Since he moved to Alaska in about 2004, his earnings have

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<sup>22</sup> Email, D. V., December 27, 2010.

<sup>23</sup> Ex. O. Payments were generally monthly, but occasionally covered multiple months. Mr. L.'s total of documented payments does not cover all the months due.

<sup>24</sup> Ex. O.

<sup>25</sup> Testimony of D. V. Ms. V. indicated that she learned of Mr. L.'s whereabouts after J. travelled to Canada to visit her paternal grandmother.

<sup>26</sup> Ex. 13; Testimony of J. L. Ms. V. testified that she had previously applied for services in 2000, while Mr. L. was still living in New Mexico, but that the New Mexico child support agency had failed to establish a support obligation.

<sup>27</sup> Ex. O.

<sup>28</sup> Testimony of J. L.

<sup>29</sup> Ex. O. Mr. L.'s documented payments do not cover all the months due.

<sup>30</sup> See Ex. J., p. 13.

<sup>31</sup> Ex. O (Wells Fargo Nos. 1003, 1006, 1008, 1009, 1011, 1013, 1014, 1017, 1024, 1028, 1030, 1032, 1037, 1040, 1044, 1061; Alaska USA Nos. 1000, 1010, 1018, 1027, 1032, 1038, 1045, 1047). In addition to these 24 documented payments, which total \$8,100 (3 @ \$200; 17 @ \$300; 4 @ \$600), Ms. V. reported a payment of \$200 on August 7, 2004, in her application for services, that is not otherwise documented. Ex. 13, p. 4.

<sup>32</sup> See Ex. G, p. 1; Testimony of J. L.

been even greater, from a low of \$68,448 in 2004 to more than \$100,000 in recent years.<sup>33</sup> When he moved to Alaska Mr. L. obtained full time work with a plumbing and heating contractor in Juneau, often working on out-of-town construction jobs; he was working on such a job in Valdez when Ms. V. applied for services in New Mexico in August, 2004. From 2007-2010, Mr. L. worked at the Kensington Mine construction site, and had increased earnings as a result of his work schedule there. His total annual total income was \$68,448 in 2004,<sup>34</sup> \$88,844 in 2005,<sup>35</sup> \$78,547 in 2006,<sup>36</sup> \$101,534 in 2007,<sup>37</sup> \$101,887 in 2008,<sup>38</sup> \$104,864 in 2009,<sup>39</sup> and \$119,185 in 2010.<sup>40</sup> His anticipated total annual income in 2011 is \$77,329.

Mr. L. recently married. He and his wife live with her son from a prior relationship. His wife is unemployed.

D. V. works as an educator. In 1998-2002, her average salary was \$24,160.<sup>41</sup> Beginning in 2003, her annual income substantially increased, and her average annual salary since then has been \$43,612.<sup>42</sup> Ms. V. presently works as an assistant principal.

J. graduated from high school in May, 2010. She is living at home with her mother and attending Central New Mexico Community College. She is a full time student, pursuing a nursing degree.<sup>43</sup> Tuition costs are about \$2,500 per semester, and J. has been taking out loans to finance her education.<sup>44</sup>

### **III. Discussion**

#### **A. Period of Arrears**

The division's amended support order established arrears beginning in September, 2004, stating this was appropriate "as that is the date D. V. applied for child support services in another state."<sup>45</sup> Mr. L. objected, and in its prehearing brief the division took the position that arrears should be established effective only in April, 2009, when Ms. V. executed an affidavit in support

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<sup>33</sup> See Ex. A-G; Ex. 6.

<sup>34</sup> Ex. A, p. 1.

<sup>35</sup> Ex. B, p. 1.

<sup>36</sup> Ex. C, p. 1.

<sup>37</sup> Ex. D, p. 1.

<sup>38</sup> Ex. E, p. 1.

<sup>39</sup> Ex. F, p. 1; Ex. 6, p. 2; Ex. 7, p. 9.

<sup>40</sup> See Ex. G.

<sup>41</sup> Supp. Ex., January 2, 2011, pp. 10, 11, 14

<sup>42</sup> Supp. Ex., January 2, 2011, pp. 12-15.

<sup>43</sup> Supp. Ex., January 2, 2011, pp. 5, 7.

<sup>44</sup> Supp. Ex., January 2, 2011, p. 7.

<sup>45</sup> Ex. 11, p. 12.

of the UIFSA petition. On appeal, Ms. V. argues that arrears should be established back to 2004, when she filed a written application for services from the New Mexico child support agency.

The award of pre-order arrears is addressed in 15 AAC 125.105, which states:

(a) When the agency establishes an ongoing support obligation, or at any time after an ongoing support obligation has been established..., the agency may issue a notice and finding of financial responsibility that sets the support obligation for periods before the effective date of the ongoing support obligation ...

...  
(4) when the agency is acting as the responding state in a case initiated...under [UIFSA], the agency will, at the request of the initiating state, establish arrears under this section for periods before the effective date of the ongoing support obligation, beginning as of the date the custodial parent applied for child support enforcement services in the initiating state... .

#### *1. Establishment of Support Obligation*

15 AAC 125.105(a) provides that “[w]hen the agency establishes an ongoing support obligation, or at any time after an ongoing support obligation has been established..., the agency may... [set] the support obligation for periods before the effective date of the ongoing support obligation.” In this case, on March 26, 2010, the division issued an administrative order establishing an ongoing support obligation effective May 1, 2010. Because J. was no longer entitled to child support under Alaska law after she graduated from high school in May, 2010, the ongoing support obligation established in the division’s March 26, 2010, order was in effect for only one month. By the time the division issued its amended administrative support order on September 1, 2010, the ongoing support obligation had expired, and the amended administrative support order therefore was issued for arrears only.

The division’s initial order was subject to adjustment following an administrative review.<sup>46</sup> However, the initial order did establish an ongoing support obligation,<sup>47</sup> albeit a short-lived one that expired before the amended order was issued. The division has authority under 15 AAC 125.100(a) to set pre-order arrears “at any time after an ongoing support obligation has been established.” Accordingly, even though the initial order that included an ongoing support obligation was superseded by an amended order for arrears only, the division has continuing authority to set pre-order arrears.

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<sup>46</sup> See 15 AAC 125.118.

<sup>47</sup> 15 AAC 125.100(c).

## 2. *Period of Arrears*

This administrative proceeding to establish a support obligation under 15 AAC 125.105(a) was commenced by the division in response to a UIFSA petition filed by the initiating agency.<sup>48</sup> However, subsection (a)(4) provides for arrears not as of the date a petition is filed in Alaska, but rather “as of the date the custodial parent applied for child support enforcement services in the initiating state.” The division asked the New Mexico agency to identify the date on which Ms. V. applied for services, and in response the New Mexico agency provided a copy of Ms. V.’s August, 2004, application.<sup>49</sup> The application on its face requests the New Mexico agency’s assistance in establishing a support obligation for an individual employed in Alaska and with an Alaskan telephone number and mailing address.

There is no evidence in the record that Ms. V. filed an application for services from the New Mexico child support agency subsequent to her 2004 request, unless her affidavit and verification in support of the UIFSA petition is deemed the equivalent of an application for services. But Ms. V.’s affidavit and verification were executed on April 30, 2009, and the New Mexico agency had commenced the UIFSA process on April 22; the documents Ms. V. executed on April 30 were not applications for services from the New Mexico agency, but rather provided information in support of a service that the New Mexico agency was already providing: the preparation of a UIFSA petition by the New Mexico agency to be filed in Alaska on Ms. V.’s behalf. Indeed, the services the New Mexico agency provided in 2009 were in substance no different than she had requested in 2004: that it locate Mr. L. and establish a support obligation for him.<sup>50</sup> The petition and the documents that Ms. V. executed supporting it are directed to the responding state, Alaska: they do not constitute an application for services from the initiating state, New Mexico. The only documented application for services in New Mexico is the 2004 application for services.

Accordingly, under 15 AAC 125.105(a)(4) arrears will be established back to April, 2004.

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<sup>48</sup> See AS 25.25.203; AS 25.25.301(c); AS 25.25.305(a)(1), (4); AS 25.25.401(a).

<sup>49</sup> Pre-Hearing Brief at 2.

<sup>50</sup> Federal law provides that a child support agency must make continuing periodic attempts to locate an obligor in response to a request for such services. See 45 CFR §303.3(b)(5).

B. Income

In this case, Mr. L.'s income from 2004-2009 is established by his income tax returns and has not been disputed. His income in 2010 has been calculated based on his year-to-date earnings paystub through December 7, 2010 (\$112,472), plus 3.5 weeks of wages for a 40-hour week at \$38.80 per hour (40 x \$38.80 = \$1,552), which was his hourly wage at that time, plus an Alaska Permanent Fund dividend. For 2011, Mr. L. testified that he will no longer be working at the Kensington mine construction site, which was the reason for his elevated earnings in 2008-2010. His 2011 income, which is relevant to his ability to pay the arrears imposed, has been estimated based on full time work for 49 weeks per year at the wages shown on his most recent paystubs for Juneau-based work (Mr. L. does not receive paid sick leave or paid holidays; calculating his income based on 49 weeks allows 8 paid holidays and 7 days of sick leave). The result is close to his average earnings during the three years before he started working at Kensington, which suggests it is a good estimate of his future income.

C. Support Obligation Calculated Under 15 AAC 125.070

For one child, a parent's support obligation under 15 AAC 125.070 is 20% of that parent's adjusted annual income,<sup>51</sup> that is, total income after allowable deductions,<sup>52</sup> including state and federal taxes<sup>53</sup> and mandatory union dues.<sup>54</sup> The division establishes a child support obligation for the first year under 15 AAC 125.070, and thereafter will adjust the support obligation for each year in which there is a material change in circumstances.<sup>55</sup>

Based on his income in 2004-2009, and providing standard deductions for applicable taxes (federal income tax, Social Security, and unemployment insurance) and a deduction for his union dues, Mr. L.'s monthly support obligation as determined under 15 AAC 125.070 is \$854 in 2004, \$1,072 in 2005, \$965 in 2006, \$1,222 in 2007, \$1,228 in 2008, \$1,264 in 2009, and \$1,429 in 2010.<sup>56</sup> His total arrears based on the support obligation as determined under 15 AAC 125.070 through May, 2010, are \$80,427 (excluding any credit for direct payments).

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<sup>51</sup> 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

<sup>52</sup> 15 AAC 125.065(a); 15 AAC 125.070(a); Civil Rule 90.3(a)(1).

<sup>53</sup> Civil Rule 90.3(a)(1)(A)(i)-(iii).

<sup>54</sup> Civil Rule 90.3(a)(1)(A)(iv). Mr. L. paid \$41 per month in union dues from July, 2005, through January, 2001, and \$42 per month since then. *See* Exhibit H.

<sup>55</sup> 15 AAC 125.105(e).

<sup>56</sup> *See* Appendices A-G, attached.

D. Manifest Injustice Due To Unusual Circumstances

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.<sup>57</sup> The obligor must provide clear and convincing evidence of manifest injustice.<sup>58</sup> Manifest injustice is shown when “a reasonable person would be convinced that the award is either unjustly large or unjustly small after carefully evaluating the award amount with reference to the considerations set out in the Commentary to Alaska Rule of Civil Procedure 90.3 and 15 AAC 125.075(a)(2) and (b).”<sup>59</sup>

One circumstance that is identified in the Commentary to Civil Rule 90.3 and in 15 AAC 125.075 is hardship due to the existence of prior and subsequent debts of the obligor parent or of subsequent children living with that parent.<sup>60</sup> Mr. L. argues that imposition of the full amount of arrears is manifestly unjust because it would cause substantial hardship in light of his current circumstances. In particular, he argues, he cannot finance the arrearages, and his current income is insufficient to make the monthly payments that would be required (approximately \$1,245, consisting of arrears (\$885) and interest (\$360)).<sup>61</sup>

Mr. L.’s accounting shows monthly expenses of approximately \$6,000, including child support in the amount of \$1,263 per month and attorney’s fees of \$500 per month.<sup>62</sup> His monthly take-home pay appears to be in the neighborhood of \$5,000.<sup>63</sup> While it appears that there may be a shortfall in monthly income at his current income and expense levels, Mr. L.’s stated expenses include his wife’s share of the household expenses, and although she is presently unemployed there is no evidence that she could not obtain employment and contribute to paying the household expenses beyond paying for utilities, as she does presently.<sup>64</sup> Moreover, Mr. L. voluntarily agreed to a monthly payment of \$1,263 per month beginning in September, 2010, and

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<sup>57</sup> 15 AAC 125.075(a)(2).

<sup>58</sup> 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

<sup>59</sup> 15 AAC 125.080.

<sup>60</sup> *See* Civil Rule 90.3, Commentary at VI(B)(2), (4); 15 AAC 125.075(b)(2). 15 AAC 125.075(a)(2)(F) restricts consideration of subsequent children to the subsequent children of the obligor parent. The commentary to Civil Rule 90.3 references “other children living with [the obligor parent]” and does not specify whether a child who is not the obligor’s own child should be considered a subsequent child for purposes of this factor.

<sup>61</sup> *See* 15 AAC 125.545(a) (monthly withholding for arrears); 15 AAC 125.840, AS 25.27.025 (establishing 6% annual interest rate on accumulated arrears from the date of the final administrative order establishing the amount of arrears).

<sup>62</sup> Ex. J, p. 1.

<sup>63</sup> *See* Ex. G, pp. 3-5. Mr. L.’s most recent paystubs reflect reduced federal income tax withholding, but his actual tax liability is unknown.

<sup>64</sup> Ex. J, p. 1.

primary responsibility for supporting the subsequent child living in the home rests with his wife, not Mr. L. Under these circumstances, Mr. L. not shown that his monthly payment for arrears will be so large as to cause substantial hardship.

Nonetheless, the case includes two other circumstances that are identified in the Commentary to Civil Rule 90.3 and in 15 AAC 125.075 as appropriate considerations in weighing whether the support obligation calculated under 15 AAC 125.070 is manifestly unjust. First, in this case the division seeks to establish arrears for a period of five years, including more than three years prior to the date Mr. L. was notified of the initiation of the administrative support proceeding; retroactive establishment of a support obligation for such a lengthy period of time can result in unfairness.<sup>65</sup> Second, the parties had, according to Mr. L., reached an agreement for support in the amount of \$300 per month.<sup>66</sup>

Regarding the lengthy period of time for which arrears have accumulated, the apparent reason that no UIFSA petition was filed is that the New Mexico agency did not have sufficient information regarding his location.<sup>67</sup> Mr. L. argues it is unjust to impose the full amount for the entire period, because the delay from 2004 until 2009 in filing a UIFSA petition in Alaska should be attributed to Ms. V., who was aware of his location all along. Ms. V., for her part, asserted at the hearing that she did not know of Mr. L.'s location, and that the delay in filing a UIFSA petition is entirely the New Mexico agency's responsibility. But Ms. V. was aware that Mr. L. was working in Alaska when she filed her application for services in New Mexico in August, 2004, and beginning in December, 2004, she regularly received checks for child support from Mr. L. showing his physical address in Juneau; moreover, in 2005, J. visited Mr. L. in Juneau. Ms. V. thus shares responsibility for the New Mexico agency's failure to file a UIFSA petition at an earlier time, because after initially filing her application for services in August, 2004, she failed to provide the New Mexico agency with updated information concerning his location until 2009.

As for the existence of an agreement between the parties, Mr. L. testified that in a telephone conversation in 2004 they agreed on payments in the amount of \$300 per month, while Ms. V. testified that the conversation occurred but that she did not recall agreeing to a specific

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<sup>65</sup> See Civil Rule 90.3, Commentary at VI(E)(1).

<sup>66</sup> See 15 AAC 125.075(b)(2).

<sup>67</sup> See notes 8, 10, *supra*.

amount. However, the record supports Mr. L.'s testimony. The New Mexico agency took no further action in the matter once Mr. L. began making payments, and, as previously noted, there is no evidence that Ms. V. notified the agency of his updated Alaska address, so that it could establish a support obligation. This suggests that Ms. V. had agreed to payments in the amount that Mr. L. was paying. In addition, in light of the living expenses that she has described, it appears that \$300 per month was a reasonable sum in relation to the actual cost of supporting J..<sup>68</sup> Under these circumstances, there is no reason to disbelieve Mr. L.'s testimony that the parties had agreed on payments in that amount. However, there is no evidence that Mr. L. continued his payments beyond April, 2008. While Ms. V. agreed to payments of \$300 per month, she never agreed to non-payment.

Mr. L. also argues that it is unfair to impose an obligation for such a large amount at this time, because J. has reached the age of majority, and therefore the money paid to Ms. V. will not be used for her support. This argument warrants careful consideration in light of the fact that under 15 AAC 125.105(a), the division lacks authority to impose any obligation for arrears unless an ongoing support obligation has been established. However, that being said, there are two flaws in Mr. L.'s argument. First, J. has continuing financial needs, in particular for educational expenses, that could have been provided for in advance if Mr. L. had been paying support at the level set under 15 AAC 125.070 during prior years. Second, Ms. V. is entitled to reimbursement through arrears for the actual cost of supporting J. during the time the arrears accrued. Indeed, prior to the adoption of Civil Rule 90.3, equitable allocation of the actual cost of raising a child was the standard approach to determining liability for arrears.<sup>69</sup> However, recouping the actual costs of child support would not warrant imposing the full amount of arrears, since Mr. L.'s obligation under 15 AAC 125.070 was substantially in excess of the full costs incurred by Ms. V. in supporting J.<sup>70</sup>

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<sup>68</sup> Ms. V.'s affidavit shows monthly living expenses in 2009 of \$1,634. Ex. 1, p. 13. She testified that she had been in the same residence since before J.'s birth, which suggests that she did not incur any additional cost for housing J. Of the non-housing costs, allocating 50% of the food, laundry, and auto expenses to J., providing \$75 per month for clothing, and including \$80 per month for health care coverage would yield total costs of around \$300 per month. Ms. V. testified as to other expenses, such as dance classes, and there were undoubtedly other costs as well, but she did not show that \$300 per month was an unreasonably low contribution in relation to Mr. L.'s legal responsibility (absent a child support order) for 50% of the actual cost of supporting J., even though it was grossly disproportionate to Mr. L.'s child support obligation as determined under 15 AAC 125.070.

<sup>69</sup> See *Matthews v. Matthews*, 739 P.2d 1298 (Alaska 1987).

<sup>70</sup> See note 68, *supra*. Ms. V. argues that imposition of the full amount is appropriate because it will assist her in paying off her own educational loans, but that debt is not Mr. L.'s responsibility.

Mr. L. proposed at the hearing that arrears be set in the amount of \$300 per month through March, 2009, and thereafter (beginning in April, 2009, when the UIFSA petition was prepared) in conformity with 15 AAC 125.070, for a total arrearage of \$34,057 (excluding any credit for direct payments). For the period through April, 2008, setting arrears at \$300 per month is reasonable: during that time, the parties had an agreement for payments in the amount of \$300 per month, and payments in that amount reasonably reflected Mr. L.'s 50% share of the actual cost of supporting J. However, after April, 2008, there is no documentary evidence that Mr. L. continued to make payments. From that time forward, it is no longer unjust to impose on him liability for support at the rate established by 15 AAC 125.070, since he had abrogated the agreement for payments at the rate of \$300 per month, and the remaining period of arrears is not unduly long. Therefore in light of all of the circumstances, arrears will be awarded in the amount of \$300 per month through April, 2008, and thereafter in conformity with 15 AAC 125.070, for a total arrearage of \$45,637 (excluding any credit for direct payments).

#### **IV. Conclusion**

Under 15 AAC 125.105(a)(4), the division establishes pre-order arrears in an interstate case beginning on the date of the application for services in the initiating state, which in this case was April, 2004. Due to the unusual circumstances of this case, and in particular because of the lengthy period of time for which arrears are sought and because the parties agreed to payments at the rate of \$300 per month, imposition of the full amount of arrears for the entire period in which they accrued would be manifestly unjust.

### **CHILD SUPPORT ORDER**

The Amended Administrative Child Support and Medical Support Order dated March 26, 2010, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated March 26, 2010, is **AFFIRMED**:

1. Mr. L.'s monthly arrears are set at \$300 effective August 1, 2004-April 30, 2008; \$1,228 effective May 1-December 31, 2008; \$1,264 effective January 1-December 31, 2009; and \$1,429 effective January 1, 2010.

2. The division shall provide a credit for direct payments in accordance with 15 AAC 125.105(b).

DATED: March 3, 2011.

Signed \_\_\_\_\_  
Andrew M. Hemenway  
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 21<sup>st</sup> day of April, 2011.

By: Signed \_\_\_\_\_  
Signature  
Andrew M. Hemenway \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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