

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

IN THE MATTER OF	)	OAH No. 10-0518-CSS
C. M.	)	CSSD No. 001163584
	)	
_____	)	

**DECISION AND ORDER**

**I. Introduction**

On November 2, 2010, a hearing was held to consider the child support obligation of C. M. for her child, D. Ms. M. did not participate. J. D. H., the custodian of record, also did not participate in the hearing.<sup>1</sup> The Division was represented by Erinn Brian, Child Support Services Specialist. The hearing was audio-recorded. The record closed on November 12, 2010.

This case is Ms. M.'s appeal of the Division's order establishing her child support obligation for D. The Division's order is upheld because Ms. M. did not meet her burden of proof to show that this order was incorrect.<sup>2</sup>

**II. Facts**

In September of 2009, Mr. H. applied for public assistance for D.<sup>3</sup> The Division served Ms. M., D.'s mother, with an Administrative Child and Medical Support Order on July 15, 2010.<sup>4</sup> Both Ms. M. and Mr. H. asked for an administrative review of Ms. M.'s child support order. Mr. H. explained that he believed the monthly amount was too high. Mr. H. wrote that he had spoken to Ms. M. and learned that she only has a welfare income of \$300 per month.<sup>5</sup> Ms. M. wrote that she only receives \$343 a month to live on herself.<sup>6</sup>

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<sup>1</sup> Mr. H. and Ms. M. did not appear or provide a phone number as directed by the notices sent to them at their addresses of record. Mr. H. and Ms. M. did not answer their phone numbers of record at the time set for the hearing. Voice mail messages were left at the phone numbers of record of Mr. H. and Ms. M. The record was held open for ten days so that the parties could file a request to reschedule the hearing. No request was filed.

<sup>2</sup> This decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a decision if "a person requests a hearing and fails to appear at the hearing.

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

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

<sup>5</sup> Exhibit 3.

<sup>6</sup> Exhibit 3.

The Division issued an Amended Administrative Child and Medical Support Order on September 16, 2010.<sup>7</sup> The Division set Ms. M.'s monthly ongoing child support for D. at \$223. The order also established arrears back to September of 2009 totaling \$650. This order set Ms. M.'s arrears at the minimum monthly amount of \$50 per month based on her reported income. This order set ongoing income at \$223, based on full-time Hawaii minimum wage earnings with no Permanent Fund Dividend.<sup>8</sup>

Ms. M. requested a formal hearing. In that request, Ms. M. explained that she only receives \$353 per month and asserted that she had enclosed her disability papers. However, the only paperwork included with the appeal form was a one page letter to Ms. M. from the Hawaii Department of Human Services dated July 2, 2010. The letter provides notification that based on her current medical evaluation Ms. M.'s disability ends August 11, 2010. The letter notifies Ms. M. that she must submit an evaluation establishing her continued disability if she wants continued assistance. The letter provides information about how to receive an evaluation, but does not indicate the nature of Ms. M.'s disability.<sup>9</sup>

Ms. M. did not provide any additional information regarding her earning capacity or employment status. Other than her assertion in her request for a hearing, dated September 26, 2010, that she only makes \$353 a month, there is no evidence of her disability status, earnings or income after August 11, 2010. Ms. M. did not participate in the hearing or file a request to have the hearing rescheduled.<sup>10</sup>

Based on the evidence in the record, I find that the Division's calculations at exhibit 4 are correct and are based on the best available estimates of Ms. M.'s income and earning capacity during the relevant time frames. I also find that Ms. M. did not show by clear and convincing evidence that it would be unjust to set her child support based on the monthly amounts set by the Division.

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Ms. M. has the burden of proving by a preponderance of the evidence that the Division's orders are incorrect.<sup>11</sup>

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<sup>7</sup> Exhibit 4.

<sup>8</sup> Exhibit 4.

<sup>9</sup> Exhibit 5.

<sup>10</sup> Exhibit 5 & Recording of Hearing.

<sup>11</sup> Alaska Regulation 15 AAC 05.030(h).

In her request for a formal hearing, Ms. M. simply did not provide enough information to show that it is more likely than not that since August of 2010 she has not been, and cannot earn an income equal to the minimum wage.<sup>12</sup> Ms. M. did not provide persuasive evidence that the estimates of Ms. M.'s income, which the Division used to set her child support, were incorrect.

**If Ms. M. is still disabled, unable to work or living on public assistance, before the deadline to file a proposal for action, she may wish to file more information, such as information about her medical condition, or her disability status with the state of Hawaii, and request that the proposed decision be remanded to consider this information.**

#### **IV. CONCLUSION**

Without Ms. M. having shown that the Division's order is incorrect, it should be affirmed.<sup>13</sup>

#### **V. CHILD SUPPORT ORDER**

The Division's Amended Administrative Child and Medical Support Order on September 16, 2010 is affirmed.

DATED this 19<sup>th</sup> day of November, 2010.

By: *Signed* \_\_\_\_\_  
Mark T. Handley  
Administrative Law Judge

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<sup>12</sup> Exhibit 6.

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

### 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 20<sup>th</sup> day of December, 2010.

By: Signed Terry L. Thurbon for  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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