

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

IN THE MATTER OF	)	
S. E. M.	)	OAH No. 10-0520-CSS
	)	
_____	)	CSSD No. 001163504

**DECISION AND ORDER**

**I. Introduction**

On November 3, 2010, a hearing was held to consider the child support obligation of S. E. M. for his children, A., B., C., D., and E. Mr. M. participated. M. T. M., the custodian of record, did not participate in the hearing.<sup>1</sup> The Child Support Services Division (Division) was represented by Andrew Rawls, Child Support Services Specialist.

After the hearing, a post hearing order was issued which gave Mr. M. a deadline of November 17, 2010 to provide the Division with his best estimates of his income in 2009 and 2010. Mr. M. did not file anything with the Division prior to the deadline. The post hearing order also set the date and time for the continued hearing. The post hearing order the instructed the parties provide a new number prior to the hearing if they did not wish to be called at the number on the post hearing order. Neither Mr. nor Ms. M. provided a new number or participated in the continued hearing. Neither party contacted the Division or the Alaska Office of Administrative Hearings prior to the continued hearing. Both parties were called at their phone numbers on the post hearing order, but neither answered. The hearings were audio-recorded. The record closed at the end of the hearing on November 24, 2010.

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

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<sup>1</sup> Ms. M. did not appear or provide a phone number as directed by the notices sent to her at their addresses of record. Ms. M. did not answer their phone numbers of record at the time set for the hearing. A voice mail message was left at her phone number of record.

<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.

## **II. Facts**

In September of 2009, Ms. M. applied for the Division's services for A., B., C., D., and E.<sup>3</sup> Paternity is not in dispute.<sup>4</sup> Mr. M. is named as A., B., C., D., and E.'s father on their birth certificates.<sup>5</sup>

The Division served Mr. M. with an Administrative Child and Medical Support Order on July 16, 2010.<sup>6</sup> Mr. M. appealed his child support order.<sup>7</sup>

Mr. M. did not provide his income information as ordered.<sup>8</sup>

The Division issued an Amended Administrative Child and Medical Support Order on September 1, 2010.<sup>9</sup> The Division set Mr. M.'s monthly ongoing child support for A., B., C., D., and E. at \$1,303. The order also established arrears beginning in September of 2009. The order set the monthly child support amounts based on Mr. M.'s estimated earnings plus a PFD. The Division estimated Mr. M.'s earnings using average earnings for an Alaska construction laborer of \$23.65 per hour.<sup>10</sup>

Mr. M. requested a formal hearing.<sup>11</sup>

At the hearing on November 3, 2010, Mr. M. asserted that the income used in Division's order was incorrect. Mr. M. did not know how much he had made during 2010 and 2009 but he estimated that it was less than the amounts used by the Division in its calculations. Mr. M. explained that he worked as a contractor and had done several construction projects during the past two years, but had not sorted out his records or prepared his tax returns.<sup>12</sup>

At the hearing, Mr. M. agreed to make his best estimate of his income for the past two years and file those estimates and all the supporting documentation that he used in making those estimates with the Division's office in Fairbanks by November 17, 2010. Mr. M. agreed that the hearing would be continued to November 24, 2010, so that the Division could ask him any

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

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

<sup>5</sup> Division's Pre Hearing Brief, page 1.

<sup>6</sup> Division's Pre Hearing Brief, page 1 & Exhibit 1.

<sup>7</sup> Exhibit 2.

<sup>8</sup> Division's Pre Hearing Brief, page 1 & Recording of Hearing.

<sup>9</sup> Exhibit 3.

<sup>10</sup> Exhibit 3.

<sup>11</sup> Exhibit 4.

<sup>12</sup> Recording of Hearing.

questions it had about the estimates he was to submit before the continued hearing.<sup>13</sup> Mr. M. did not provide those estimates or any documentation of his 2009 or 2010 income or participate in the continued hearing.

Based on the evidence in the record, I find Mr. M. did not show that the Division's calculations at exhibit 3 were incorrect or that these calculations were not based on the best available estimates of Mr. M.'s earning capacity during the relevant time frames. I also find that Mr. M. did not show by clear and convincing evidence that it would be unjust to set his 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 Mr. M., has the burden of proving by a preponderance of the evidence that the Division's orders are incorrect.<sup>14</sup>

The Division uses statistical wage data to estimate income when there is no reported income and the obligor does not provide income information. Mr. M. did not meet his burden to show that it was more likely than not that the estimates of Mr. M.'s income, which the Division used to set his child support, were incorrect.

### **IV. Conclusion**

Without Mr. M. having shown that the Division's order is incorrect, the orders should be affirmed.<sup>15</sup>

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

The Division's Amended Administrative Child and Medical Support Order on September 1, 2010 is affirmed.

DATED this 24rd day of November, 2010.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>13</sup> Recording of Hearing.

<sup>14</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>15</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 14<sup>th</sup> day of December, 2010.

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

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