

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

IN THE MATTER OF:)
)
M J. S)
)
_____) OAH No. 10-0579-CSS
CSSD Case No. 001158915

REVISED DECISION AND ORDER

I. Introduction

This case concerns the obligation of M J. S for the support of D B. The custodian of record is M M. B.

On October 15, 2010, the Child Support Services Division issued an amended administrative child support order establishing an ongoing support obligation of \$497 per month, with arrears at the same monthly amount for the period from February 1, 2008. Mr. S filed an appeal and requested an administrative hearing.

The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on December 2, 2010. Mr. S participated and provided testimony. Ms. B was not available at her telephone number of record and did not participate. The administrative law judge issued a proposed decision and Ms. B filed a proposal for action. The commissioner returned the case to the administrative law judge for a supplemental hearing, which was conducted on February 28, 2011. Mr. S and Ms. B participated. Erinn Brian represented the division at both hearings.

Mr. S did not contest the amount of income attributed to him, but provided updated income information for the fourth quarter of 2010 at the supplemental hearing. The division agreed that he is entitled to a deduction from income for prior children in the home. Absent manifest injustice due to unusual circumstances, the child support obligation is set in accordance with 15 AAC 125.070. In this case, neither party proved by clear and convincing evidence the existence of circumstances that make the presumptive amount manifestly unjust. Therefore, arrears and ongoing support are set in accordance with 15 AAC 125.070.

II. Facts

M S is a mechanic who lives in Fairbanks. He has been steadily employed since early in 2007, except for some short periods of unemployment.¹ In 2008, his total annual income was \$36,041, including wages (\$32,872) and his 2008 Alaska Permanent Fund dividend (\$2,069) and resource rebate (\$1,200).² In 2009 his total annual income was \$35,680.78, including wages (\$34,375.78) and an Alaska Permanent Fund dividend (\$1,305).³ In 2010, his total annual income was \$33,253, including wages (\$31,972) and an Alaska Permanent Fund dividend (\$1,281).⁴ His current wage is \$16.50 per hour. His anticipated total annual income in 2011 is \$35,601, consisting of wages (\$34,320)⁵ and an Alaska Permanent Fund dividend (\$1,281). Mr. S's take home pay, exclusive of child support payments, is about \$2,400 per month. Mr. S can earn extra money outside of his regular job by working as a mechanic.⁶

Before the child support order in this case was issued, Mr. S lived in rented premises with his fiancée and their two children, both of whom are older than D. The household rent plus electricity and electronic services was about \$1,305 per month.⁷ After the child support order was issued Mr. S and his family moved into his mother's apartment because they could no longer afford to live independently. Mr. S contributes to the rent as best he can, generally from \$250-\$500 per month. Mr. S owns a fully-paid for 1998 Dodge Stratus. The current necessary monthly household living expenses for Mr. S, his wife, and their two children are about \$1,372-\$1,722, including his contribution to rent, food (\$450), auto insurance (\$100-\$200), gasoline (\$172),⁸ vehicle maintenance (\$50), personal care items (\$150), and clothing (\$200). Living in their own apartment and paying rent equivalent to his mother's, Mr. S's total necessary monthly

¹ See Ex. 8, p. 8; Ex. 11; Testimony of M. S.

² Ex. 11.

³ Ex. 11.

⁴ See Ex. 11; Testimony of M. S.

⁵ This is full time work at his current wage of \$16.50 per hour ($\$16.50 \times 2080 = \$34,320$).

⁶ Mr. S testified he can make about \$100-\$200 for working on a car on his own time. He testified that he had earned about \$500 from this kind of work in 2010.

⁷ Mr. S testified that the monthly rent was \$1,050, and that he paid about \$125 per month for electricity, \$80 for Internet and cable television, and \$50 for telephone service.

⁸ Mr. S testified he pays about \$40 per week for gasoline ($\$40 \times 4.3 = \172).

household living expenses would be about \$2,272-\$2,472 per month.⁹ In addition to these household living expenses, Mr. S has a past due rent bill of \$1,800 from his prior residence, and his fiancée has hospital bills for herself and their children that are being paid at the rate of about \$100 per month. Mr. S's fiancée is presently employed, but due to a medical condition may find it necessary to give up her current job in the near future. Mr. S's mother is presently unemployed and receiving unemployment compensation.

M B received public assistance for D from February, 2008, through August, 2009. She recently married. Her husband is employed and earns \$13 per hour; he takes home about \$1,200 per month (after child support is deducted).¹⁰ The couple has two children living with them, D and a child of their own; Ms. B provides child care for the children and is not employed.¹¹ She has medical issues that may limit her ability to work, but she has not been found eligible for disability payments.¹² Ms. B's husband has another child, not in his custody, for whom he pays \$388 per month in child support. The couple rents a mobile home; their monthly payment for the mobile and space rent is \$900.¹³ Monthly costs for electricity and fuel oil for heat average over \$350 per month.¹⁴ The couple own two vehicles, with monthly payments of \$230 for an Impala and fully paid for Chevrolet pickup; they pay about \$300 per month for gasoline.¹⁵

Mr. S was served with a paternity complaint on July 31, 2009. However, even prior to that time, he was aware that Ms. B had given birth to a child that could be his. He requested a paternity test in order to be assured of paternity, but he was aware of his likely obligation to provide support from the time D was born.

⁹ This would include the rent (\$950) and utilities (\$200-300) that his mother currently pays, plus the other household living expenses listed above. Mr. S's former residence was substantially equivalent in cost. *See* note 6, *supra*.

¹⁰ Testimony of M. B.

¹¹ Testimony of M. B.

¹² Testimony of M. B.

¹³ Ms. B testified that space rent is \$275 per month, and that the trailer payment is \$900 per month.

¹⁴ Ms. B testified that the electrical bill runs \$220-\$270 in the winter and \$150-\$175 in the summer, and that heating fuel is used to supplement the electrical heat in the winter and can cost up to \$700 per month.

¹⁵ Testimony of M. B.

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,¹⁶ that is, income after allowable deductions for such things as taxes and the cost of supporting older children in the home.¹⁷ In this case, the division initially failed to provide a deduction for Mr. S's two older children. Following the hearing, the division recalculated Mr. S's obligation, using the same income information that it had previously, and determined that Mr. S's presumptive obligation for arrears and ongoing child support is \$363 per month.¹⁸ The division did not provide for a reduction in Mr. S's support obligation in 2009-2010, because the amount of his presumptive obligation did not change by at least 15% in 2009 or 2010 from what it had been in 2008.¹⁹

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.²⁰ In order to qualify for this reduction, the obligor must provide clear and convincing evidence of manifest injustice.²¹ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.²²

Mr. S argues that his child support obligation should be reduced because his total monthly expenses (\$2,053-\$2,403), including his current monthly household expenses (\$1,372-\$1,722) and his obligation for arrears (about \$325)²³ and ongoing support (\$356), are excessive in light of current monthly available income (\$2,400). Moreover, Mr. S pointed out, if he had not moved in with his mother his total expenses (\$2,953-\$3,153)²⁴ would exceed his ability to pay. Finally, Mr. S notes that he has outstanding debts for rent and his fiancée's medical expenses, and that she will be unable to contribute to the household finances if she is unable to work due to a medical condition.

¹⁶ 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

¹⁷ 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

¹⁸ Ex. 12.

¹⁹ See 15 AAC 125.118(e).

²⁰ 15 AAC 125.075(a)(2).

²¹ 15 AAC 125.075(a); see Civil Rule 90.3(c)(1).

²² See 15 AAC 125.080.

²³ For an obligor whose net annual income exceeds \$15,449, the division will withhold \$325 per month for arrears of \$16,000-\$16,999. See 15 AAC 125.545(a).

²⁴ Mr. S's monthly household expenses, if living independently, are \$2,272-\$2,472 per month. Arrears and ongoing support add \$681 per month.

Mr. S has not shown that the presumptive support obligation is manifestly unjust. First, it appears that his current income is sufficient to meet his current expenses. Second, while the current living arrangement may not be entirely satisfactory, Mr. S's contribution to rent should be sufficient (if his mother were employed) to allow for a larger rental unit that would more reasonably accommodate his mother and his family. Third, Mr. S has been aware of the likelihood that he would have a parental support obligation since 2008.²⁵ Fourth, Mr. S is presently paying \$200 per month for past due rent, even though his payment arrangement allows payments of only \$50 per month. Fifth, the cost of support for the older children in the home is offset to some extent by their own Alaska Permanent Fund dividends. Sixth, Mr. S has the capacity to earn extra income, if necessary, by working independently if his wife is unable to provide financial assistance for the household living expenses. Under these circumstances, it is not manifestly unjust to charge Mr. S with the full presumptive amount of arrears and ongoing support, without annual adjustments for the minor fluctuations in his income.

Ms. B, for her part, argues that the amount of support should not be reduced from the amount of the amended order (\$497 per month), in light of the limited resources of her own household. She argues that D has special needs that have caused her to incur increased expenses for clothing and diapers. However, in light of the fact that Mr. S's obligation for arrears will result in a higher monthly payment until arrears have been paid off, and Mr. S anticipates obtaining work at higher wages in the near future, it is not manifestly unjust to set the ongoing support obligation at the presumptive amount.

IV. Conclusion

Neither Mr. S nor Ms. B proved by clear and convincing evidence the existence of facts under which the presumptive child support obligation for arrears or ongoing support is manifestly unjust. Arrears and ongoing support should be set at the presumptive amount.

Mr. S testified that he hopes to obtain employment at significantly higher wages at the no name mine later this year. The division should review this matter in a timely manner.

²⁵ Where a parent is unaware of the probability of liability for support of a child, it may in some circumstances be manifestly unjust to impose an obligation for the full amount of arrears. *See, e.g., In Re G.S.*, OAH No. 06-0367-CSS (Department of Revenue 2006).

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated October 15, 2010, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated October 15, 2010, is **AFFIRMED**:

- 1. Mr. S’s arrears are set at \$363 per month from February, 2008, through May, 2011.
- 2. Mr. S’s ongoing child support is set at \$356 per month, effective June 1, 2011.

DATED: May 11, 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 Revised 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 18th day of May, 2011.

By: *Signed* _____
 Signature
 Jerry Burnett _____
 Name
 Deputy Commissioner _____
 Title

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