

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

IN THE MATTER OF)	OAH No. 11-0005-CSS
J C B)	CSSD No. 001167898
)	
_____)	

DECISION AND ORDER

I. Introduction

On November 4, 2010, a hearing was held to consider the child support obligation of J C. B for his child, S. Mr. B did not participate. D S Z, the custodial parent, participated in the hearing.¹ The Division was represented by Andrew Rawls, Child Support Services Specialist. The hearing was audio-recorded. The record closed on February 4, 2011.

This case is Mr. B's appeal of the Division's orders establishing his child support. The Division's order should be adjusted to set all of Mr. B's arrears at \$435 per month based on updated income information.²

II. Facts

In April of 2009, Ms. Z applied for the Division's services for S.³ Paternity is not in dispute.⁴ Mr. B is named as S's father on his birth certificate.⁵

The Division served Mr. B with an Administrative Child and Medical Support Order on October 21, 2010.⁶ Mr. B appealed his child support order.⁷

¹ This hearing was first rescheduled at Mr. B's request. However, Mr. B did not appear at the rescheduled hearing or provide a phone number as directed by the notices sent to him at his address of record. Mr. B did not answer his phone numbers of record at the time set for the hearing. A voice mail message was left at one of the phone numbers of record of Mr. B. The day after the rescheduled hearing, Mr. B called the Office of Administrative Hearings and stated that his cell phone did not ring. The number that Mr. B provided as his cell phone number had not been provided prior to the hearing. When Mr. Bolger called the Office of Administrative Hearings the day after the rescheduled hearing, he was informed that he would need to file a written request to reschedule the hearing again. The record was held open for ten days so that the Mr. B could file a written request to reschedule the hearing. No request was filed.

² 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".

³ Division's Pre Hearing Brief, page 1 & Exhibit 1.

⁴ Exhibit 7.

⁵ Division's Pre Hearing Brief, page 1.

⁶ Division's Pre Hearing Brief, page 1 & Exhibit 1.

⁷ Exhibit 3.

The Division issued an Amended Administrative Child and Medical Support Order on December 17, 2010.⁸ The Division set Mr. B's monthly ongoing child support for S at \$435. The order also established arrears beginning in April of 2010, but arrears for 2010 were set at \$226 per month.⁹ Mr. B requested a formal hearing.¹⁰

Based on the evidence in the record, I find that the Division's calculations at exhibit 6 page 7 are correct and are based on the best available estimates of Mr. B's income during the relevant time frames. I also find that Mr. B did not show by clear and convincing evidence that it would be unjust to set his child support at \$435, the monthly amount calculated at exhibit 6, page 7.

III. Discussion

In his request for a formal hearing, Mr. B argued that his child support should be reduced because his regular job is less than 40-hours per week and only covers the school year. At the hearing, Ms. Z explained that Mr. B works on special projects for his employer in addition to his regular work, and ends up working almost full-time year round as a result. Ms. Z pointed out that his extra work was reflected in the paystubs that Mr. B had submitted. Ms. Z also noted that it was difficult to schedule custody hearings because Mr. B always seem to have time conflicts due to projects he was doing for his employer. Ms. Z argued that even if he was working less than full-time, Mr. B should have full-time income imputed to him because there is nothing that would prevent him from finding full-time work.

Mr. B's monthly arrears for 2010 were set at \$226, based on annual earnings of \$14,010.82, which improperly excluded two quarters of income in 2010. At the hearing the Division showed that the best estimate of Mr. B's 2010 income was \$31,441.00, the amount used to set his ongoing child support at \$435 per month.

Obligor parents should not always have to pay support based on their maximum earning capacity when they choose to earn less than they could.¹¹ The custodial parent and the children should not, however, be forced to finance the noncustodial parent's lifestyle choice if that choice is unreasonable given the duty to provide child support.¹² The Alaska Supreme Court has

⁸ Exhibit 6.

⁹ Exhibit 6.

¹⁰ Exhibit 7.

¹¹ See *Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

¹² *Olmstead v. Ziegler*, 42 P3d 1102 (Alaska 2002).

indicated that the circumstances surrounding an obligor's failure to maximize earnings should be carefully considered, and then a determination made about whether, under all the circumstances in the case, income should be imputed.¹³

In this case it is not appropriate to impute income if Mr. B's arrears and ongoing child support are both set at \$435 per month based on income using the more accurate estimate of his 2010 earnings. Mr. B apparently works close to full-time when the special projects that he does in addition to his regular part-time work he does for his employer is included. At the hearing, Ms. Z agreed that the income used to calculate Mr. B's child support obligation of \$435 per month was probably a reasonable estimate of his earning capacity.

IV. CHILD SUPPORT ORDER

1. Mr. B's ongoing child support for S is set at \$435 per month effective March 1, 2011.
2. Mr. B is liable for child support arrears for S in the monthly amounts of \$435 for the months of April 2010 through February 2011.
3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for S.
4. All other provisions of the Amended Administrative Child and Medical Support Order issued on December 17, 2010 remain in effect.

DATED this 18th day of February, 2011.

By: *Signed* _____
Mark T. Handley
Administrative Law Judge

¹³ See *Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

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 9th day of March, 2011

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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