

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

In the Matter of	)	
	)	
E. P. M., JR.	)	
	)	
_____	)	OAH No. 11-0047-CSS CSSD Case No. 001167511

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of E. P. M. for the support of A. J. S. The custodian of record is L. M. S.

The Child Support Services Division issued an administrative child support order dated December 6, 2010, establishing Mr. M.'s ongoing support obligation in the amount of \$255 per month.<sup>1</sup> Mr. M. appealed and requested a formal hearing. The assigned administrative law judge conducted a telephonic hearing on March 17, 2011.<sup>2</sup> Mr. M. participated and Erinn Brian represented the division. Ms. S. was not available at her telephone number of record and did not participate; she has not since contacted the Office of Administrative Hearings.

Because Mr. M. is incarcerated, the division's order is amended and ongoing child support is set at \$50 per month.

**II. Facts**

E. M. worked for part of the year in 2009. His total income in 2009 was \$5,600, including earned income (\$4,925) and his Alaska Permanent Fund dividend (\$1,305).<sup>3</sup> In 2010, Mr. M. was unemployed for most of the year and was incarcerated on September 14, 2010.<sup>4</sup> His total income in 2010 was \$1,521.<sup>5</sup> Mr. M. is scheduled for release from prison in September, 2011. Because of his criminal history, he anticipates it will be difficult for him to find work after his release.<sup>6</sup>

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<sup>1</sup> Ex. 4.  
<sup>2</sup> See AS 25.27.190, 15 AAC 05.030, 15 AAC 125.118(f).  
<sup>3</sup> Ex. 4, p. 7. At the hearing, Mr. M. confirmed the income figures used by the division.  
<sup>4</sup> Pre-Hearing Brief; Ex. 8. Mr. M. confirmed these facts at the hearing.  
<sup>5</sup> Ex. 9, p. 1. Mr. M. confirmed his income at the hearing.  
<sup>6</sup> See Ex. 1.

## II. Discussion

The division establishes a child support obligation based upon “the expected actual annual income that the parent will earn or receive when the child support award is to be paid.”<sup>7</sup> When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.<sup>8</sup> For one child, a parent’s presumptive support obligation is 20% of that parent’s adjusted annual income,<sup>9</sup> that is, total income after allowable deductions.<sup>10</sup>

In this case, the division calculated Mr. M.’s child support obligation based on his 2009 actual income, his 2010 partial year income plus anticipated income at the minimum wage, and his anticipated income at the minimum wage in 2011.<sup>11</sup> In fact, because he was incarcerated in 2010,<sup>12</sup> Mr. M.’s actual income in 2010 and 2011 is not as great as anticipated, and in fact is so low as to result in the minimum support obligation of \$50 per month in both years, as shown in the division’s calculations prepared for the hearing.<sup>13</sup> As Mr. M. and the division agreed at the hearing, those calculations reflect Mr. M.’s correct support obligation based on his testimony at the hearing and the division’s review of income information provided by the Department of Labor and Workforce Development.

## IV. Conclusion

Mr. M.’s child support order should incorporate the division’s most recent calculations, as set forth in Exhibit 9.

### CHILD SUPPORT ORDER

The Administrative Child Support and Medical Support Order dated December 6, 2010, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated December 6, 2010 is **AFFIRMED**:

1. Mr. M.’s arrears are set at \$88 per month for the month of December, 2009, and at \$50 per month for the months from January 1, 2010 through May 31, 2011.

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<sup>7</sup> 15 AAC 125.030(a).

<sup>8</sup> Duffus v. Duffus, 72 P.3<sup>rd</sup> 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3<sup>rd</sup> 52, 56 (Alaska 2001).

<sup>9</sup> 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

<sup>10</sup> 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

<sup>11</sup> Ex. 4, pp. 4-5.

<sup>12</sup> E. M. testimony.

<sup>13</sup> Ex. 9.

2. Mr. M.'s ongoing child support obligation is set at \$50 per month, effective June 1, 2011.

DATED: May 5, 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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 31<sup>st</sup> day of May, 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.]