

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

IN THE MATTER OF	)	OAH No. 11-0115-CSS
R O	)	CSSD No. 001168354
	)	
_____	)	

**CORRECTED DECISION AND ORDER<sup>1</sup>**

**I. Introduction**

This case is Mr. R O's appeal of the Division's order establishing his monthly child support obligation the child, J. On April 14, 2011, a formal hearing was held to consider Mr. O's appeal.<sup>2</sup> Mr. O participated in the hearing. Mr. O is J's adoptive father. J's adoptive mother, and biological grandmother, L P. N also participated. M B, J's other biological grandmother and the third party custodian of record, did not participate.<sup>3</sup> Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on April 14, 2011.

At the hearing, the Division agreed that Mr. O's arrears and ongoing child support should be set at \$0 per month the in accordance with the Division's latest calculations, which base Mr. O's child support income calculation on his and J's social security benefits plus a PFD and give Mr. O a credit for the children's insurance benefits that J receives.

**II. Facts**

J was in his biological mother's custody until he was eleven years old. Ms. B took custody of him because his mother made him leave her house. Ms. B had J living with her in no name city for only a short time. She was having problems managing him and asked Ms. N to take him to live with her in no name city. Mr. O and Ms. N had J evaluated and got him

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<sup>1</sup> In the Matter of R O, Child Support Decision and Order, was adopted and distributed to the parties. On May 16, 2011, the Division filed a motion for reconsideration asking for a correction of a manifest error in the conclusion and order sections on pages 3 & 4. The error was the oversimplification indicating that the monthly amount set in the order was \$0, rather than \$391 less credits for CIB payments. A hearing was held on July 18, 2011 on the Division's motion. Ms. B participated, but Mr. O did not. The motion was granted. This corrected decision is issued in place of the original. The corrections appear in bold italic type. This corrected decision is issued under the authority of 2 AAC 64.350(b).

<sup>2</sup> The hearing was held under Alaska Statute 25.27.170.

<sup>3</sup> Ms. B did not appear or provide a phone number to call for the hearing as instructed by the notice sent to her address of record. When her phone number of record was called at the time scheduled for the hearing, the gentleman who answered that phone stated that Ms. B had gone to no name city, and he did not have a phone number for her.

treatment for some of his behavioral problems. Mr. O and Ms. N adopted J through a tribal adoption when he was still eleven years old.

In 2010 J went to visit Ms. B, but he did not return when he was told to. Mr. O heard that J was living with different relatives of his in no name city and no name city. Mr. O filed a runaway report with the police.<sup>4</sup>

Ms. B received public assistance for J for the months of May through July of 2010.<sup>5</sup> Mr. O explained that he and Ms. N got J back in June of 2010. Mr. O explained that J has left their home again. J is now seventeen years old is living on his own somewhere no name city or no name city. No public assistance has paid for J since July of 2010.<sup>6</sup>

The Division issued an Administrative Child and Medical Support Order on January 5, 2011.<sup>7</sup> Mr. O requested an administrative review of that order.<sup>8</sup>

The Division issued an Administrative Review Decision on February 2, 2011.<sup>9</sup> The Division set Mr. O's ongoing child support for J at \$410 per month, but ongoing child support was not being collected as J was no longer living with Ms. B and there was no public assistance being paid for J. The order also established arrears for the months of May through July of 2010. Mr. O requested a formal hearing, explaining that he had custody of J beginning in June of 2010.<sup>10</sup>

At the hearing, The Division reviewed Mr. O's social security information and determined that Mr. O receives only \$13,392 per year in social security benefits. J also receives \$732 per month in children's insurance benefits (CIB) as a result of Mr. O's social security. The Division filed new calculations based on this information and determined that Mr. O's arrears and ongoing monthly child support should be set at \$0 per month because the credit Mr. O should receive for the CIB payments that J receives exceed his monthly child support obligation.<sup>11</sup>

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<sup>4</sup> Recording of Hearing- Testimony of Mr. O and Ms. N.

<sup>5</sup> Ex.1, page 9 & Recording of Hearing.

<sup>6</sup> Recording of Hearing.

<sup>7</sup> Ex. 1.

<sup>8</sup> Ex. 2.

<sup>9</sup> Ex. 6.

<sup>10</sup> Ex. 7.

<sup>11</sup> Ex. 8 & Recording of Hearing.

At the hearing, Mr. O and the Division agreed that his ongoing child support and arrears should be set in accordance with the Division's latest calculations, at Exhibit 8.<sup>12</sup>

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations and the information used in these calculations is correct.<sup>13</sup> I also find that it is more likely than not that J lived with Mr. O and Ms. N for all of July 2010.

### **III. Discussion**

J receives CIB payments because of Mr. O's social security benefits. Most parents who are living on Social Security Benefits do not have to pay any child support because CIB payments are first added to the parent's income when calculating child support and then credited against a parent's monthly child support obligation. Because J receives CIB payments as the result of Mr. O's social security, the CIB payments are credited against Mr. O's monthly child support obligation.<sup>14</sup> This means that Mr. O's child support obligation is effectively paid by Social Security.

In a child support hearing, the person who filed the appeal, in this case Mr. O, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>15</sup> There was no dispute at the hearing that the Division's latest calculations are correct and that the Division's order should be adjusted.<sup>16</sup>

### **IV. Conclusion**

Mr. O's monthly child support arrears and ongoing should be set at **\$391, less credits for CIB payments**, in accordance with the Division's latest calculations.

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

1. Mr. O's ongoing child support for J is set in the monthly amount of **\$391**, effective May 1, 2011. ***J receives \$732 per month in children's insurance benefits (CIB) as a result of Mr. O's social security.***
2. Mr. O's child support arrears for J are set in the amount of **\$391** for the months of May and June of 2010. ***J receives \$732 per month in children's insurance benefits (CIB) as a result of Mr. O's social security.***

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

<sup>13</sup> Recording of Hearing & Ex. 8.

<sup>14</sup> *Miller v. Miller*, 890 P2d 574 (Alaska 1995).

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

<sup>16</sup> Recording of Hearing.

3. All other provisions of the Administrative Review Decision issued on February 2, 2011 remain in effect.

DATED this 18<sup>th</sup> day of July, 2011.

By: Signed  
Mark T. Handley  
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 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 3<sup>rd</sup> day of August, 2011

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

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