

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

IN THE MATTER OF)	OAH No. 11-0126-CSS
L P. N)	CSSD No. 001168355
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is Ms. L P. N's appeal of the Division's order establishing her monthly child support obligation for the child, J. On April 14, 2011, a formal hearing was held to consider Ms N's appeal.¹ Ms N participated in the hearing. Ms. N is J's adoptive mother, and biological grandmother. R O, J's adoptive father, also participated. M B, J's other biological grandmother and the third party custodian of record, did not participate.² 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.

The administrative law judge concludes that Ms N should only be charged arrears for the months of May and June of 2010. Ms. N's arrears and ongoing child support should be set at the minimum of \$50 per month due to her lack of income. Ongoing child support is not being collected at this time because J is no longer in the custody of a third party custodian and no public assistance is being paid.

II. Facts

J was in his biological mother's custody until he was eleven years old. Ms. B took custody of J because his mother made him leave her house. Ms. B had J living with her in no name city for only a short time. Ms. B 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 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

¹ The hearing was held under Alaska Statute 25.27.170.

² 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.

and no name city. Mr. O filed a runaway report with the police.³

Ms. B received public assistance for J for the months of May through July of 2010.⁴ 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 been paid for J since July of 2010.⁵

Mr. O and Ms. N are retired. Ms. N is 60 years old and is not employed. Mr. O and Ms. N travel to no name city in the summer for subsistence fishing. 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. They all receive PFDs.⁶

The Division issued an Administrative Child and Medical Support Order on January 5, 2011.⁷ Ms. N requested an administrative review of that order.⁸

The Division issued an Administrative Review Decision on March 17, 2011.⁹ The Division set Ms. N's ongoing child support for J at \$255 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 of \$50 per month for the months of May through July of 2010. Ms. N requested a formal hearing, explaining that she had custody of J beginning in June of 2010.¹⁰

Prior to the hearing, the Division filed a request to reassign Ms. N's appeal to the administrative law judge who was hearing Mr. O's appeal and to hear both appeals at the same time. This motion was granted.

At the hearing, Ms. N that did not dispute the Division's finding that her child support arrears should be set at the minimum based on her lack of income. Ms. N explained that was 60 years old and she does not yet qualify for social security.¹¹ The Division imputed minimum wage income to Ms. N in setting her ongoing child support at \$255 per month. Although the Division is not currently collecting ongoing child support, the evidence in the record does not

³ Recording of Hearing- Testimony of Mr. O and Ms. N.

⁴ Ex.1, page 9 & Recording of Hearing.

⁵ Recording of Hearing.

⁶ Recording of Hearing.

⁷ Ex. 1.

⁸ Ex. 2.

⁹ Ex. 6.

¹⁰ Ex. 7.

¹¹ Recording of Hearing.

show that Ms. N is unreasonably under-employed.

Based on the evidence in the record, I find that it is more likely than not that the Division's calculations that result in a minimum order for Ms. N are correct.¹² I find that Ms. N is not unreasonably under-employed.¹³ I also find that it is more likely than not that J lived with Mr. O and Ms. N for all of July 2010.¹⁴

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Ms. N has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁵ There was no dispute at the hearing that the Division's order should be adjusted to remove arrears for the month of July 2010.¹⁶

The evidence did not show that Ms. N was voluntarily under-employed. Under Civil Rule 90.3, child support may be calculated based on a determination of potential income where there is voluntary unemployment or underemployment.¹⁷ A noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.¹⁸ The Alaska Supreme Court has 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.¹⁹

Under the circumstances of this case, it is not appropriate to impute income to Ms. N. Ms. N's failure to earn significant income 2011 is due to her and her husband's decision to live in retirement supplemented by subsistence fishing. Given Ms. N and Mr. O's ages and financial circumstances it appears that even before J left, the intact family had made the reasonable decision that they could adequately support themselves through subsistence fishing, Mr. O's social security and J's child insurance benefits and their PFDs. There is no evidence that Ms. N reduced her income after J left. She was unemployed for all of 2010. It appears that Ms. N

¹² Recording of Hearing & Ex. 1, page 7.

¹³ Recording of Hearing.

¹⁴ Recording of Hearing.

¹⁵ Alaska Regulation 15 AAC 05.030(h).

¹⁶ Recording of Hearing.

¹⁷ See Alaska Civil Rule 90.3, Commentary III, C.

¹⁸ *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

¹⁹ See *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 2002).

would continue to have been unemployed, living in retirement with Mr. O, if J was still with them.

IV. Conclusion

Ms. N's monthly child support arrears should be set at \$50 due to her low income. Ms. N should not be charge child support for the month of July 2010 because J lived with her for that month.

V. CHILD SUPPORT ORDER

1. Ms. N's ongoing child support for J is set in the monthly amount of \$50, effective May 1, 2011.
2. Ongoing child support is not being collected while J is not in the custody of a third party.
3. Ms. N's child support arrears for J are set in the amount of \$50 for the months of May and June of 2010.
4. All other provisions of the Administrative Review Decision issued on March 17, 2011 remain in effect.

DATED this 18th day of April, 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 6th day of May, 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.]