

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

IN THE MATTER OF:)
)
B A. D)
)
_____) OAH No. 11-0213-CSS
CSSD Case No. 001164285

DECISION AND ORDER

I. Introduction

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

On May 9, 2011, the Child Support Services Division issued an amended administrative child support order establishing an ongoing support obligation of \$609 per month, with arrears at the same monthly amount beginning September 1, 2010. Mr. D 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 June 20, 2011. Mr. D participated and provided testimony. Ms. E was not available at her telephone number of record. She did not participate and has not contacted the Office of Administrative Hearings. Erinn Brian represented the division.

Mr. D is entitled to a deduction for the cost of supporting his three older children in the home. His anticipated income in 2011 is less than his actual income in 2010, and yields a presumptive support obligation of \$297 per month. Mr. D did not show that amount is manifestly unjust. Accordingly his ongoing support order is set at \$297 per month.

II. Facts

Mr. D is married. He lives with his wife and his three children, ages 7,11 and 18 (a high school student). His wife is expecting a baby in the fall. Mr. D is a custodian who works full time for the No Name Borough School District and supplements his income by working part time in the same capacity for No Name Professional Cleaning Service (T). In 2009, his total income was \$47,726, including wages (\$46,379), interest

(\$42) and an Alaska Permanent Fund dividend (\$1,305).¹ In 2010, his total income was \$49,222, including wages (\$47,941) and his dividend (\$1,281).² His current wage from the school district is \$16.13 per hour and from T, \$9.00 per hour; his current monthly take-home pay is approximately \$2,640, from the school district (\$1,811)³ and T (\$829).⁴ He works a regular 40 hour week for the school district.⁵ Up until this year, Mr. D worked on a nine month contract at the school district. This year, he will have a full twelve month contract. The contracts that Mr. D was primarily working on for T have expired, and he anticipates substantially reduced employment with T in 2011. Mr. D's wife presently works part-time and earns around \$1,200-500 per month.

Mr. D's monthly household expenses total about \$2,664.42, including rent (\$1,350), automobile insurance, maintenance, and fuel (\$425), electricity (\$102), groceries (\$500), and telephone (\$97.42), and personal items (\$190).⁶ Other expenses include cable television (\$115.54) and miscellaneous items (\$200).⁷

M E has moved to the Philippines with J.

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,⁸ that is, income after allowable deductions for such things as taxes and the cost of supporting older children in the home.⁹ In this case, the division initially failed to provide a deduction for Mr. D's three older children. Following the hearing, the division recalculated Mr. D's obligation, using the same income information that it had previously, and determined that Mr. D's presumptive obligation for arrears and ongoing child support is \$408 per month.¹⁰

¹ Ex. 4, pp. 1, 3.

² Ex. 4, pp. 10, 12-13. The amount shown for wages includes his Social Security wages (\$24,661) from his 2010 W-2 form from the school district, rather than only his taxable wages (\$20,676).

³ See Ex. 4, pp. 4-7.

⁴ See Ex. 4, pp. 8-9.

⁵ *Id.* Mr. D's paystubs from the school district show about 80 hours for each two week period. His paystubs from T's, which show his hourly wage as \$9, translate into about 20 hours per week of work (*e.g.*, for January, gross pay \$928 = 103 hours, $103 \div 4.3 = 23.95$).

⁶ Ex. 3, p. 2.

⁷ Ex. 3, p. 2.

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

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

¹⁰ Ex. 8.

The division's calculation of the monthly support obligation for arrears dating from 2010 was based on actual income. As for arrears and ongoing support obligation in 2011, Mr. D testified that because the contracts that T had him working on in prior years have expired, he anticipates a substantial reduction in his part-time extra job during 2011. He testified that he had worked a little bit for T in 2011, which is consistent with the evidence in the record.¹¹ However, there is no assurance that he will have any further work for T. Absent any showing that he can expect regular employment from T his anticipated total income in 2011 (that is, the amount he can anticipate earning on a monthly basis) is limited to his wages from his regular, full-time, twelve-month position with the school district. At his hourly rate of \$16.13 per hour, that amount is \$33,550, and yields a support obligation of \$297 per month, as shown on Appendices A and B (attached).

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.¹² The obligor must provide clear and convincing evidence of manifest injustice.¹³ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.¹⁴

Mr. D argues that his child support obligation should be reduced because his total monthly expenses (\$2,979), including his current monthly household living expenses (\$2,664) and his other non-essential but reasonable monthly expenses (about \$315)¹⁵ exceed his current monthly available income (\$2,640).

It does not appear that Mr. D's current monthly household expenses can be reduced to any substantial degree. He cannot, unlike some individuals seeking a reduction, reduce his car payments, because he does not have any car payments. His rent for an apartment for a family of five, with a baby on the way, is reasonable. A monthly cost of \$500 for groceries for a family of six in a high-cost location such as Kodiak seems

¹¹ Mr. D submitted paystubs showing that he worked for T's in January and February. The division reviewed wage information from the Department of Labor and Workforce Development, and it shows not wages from T's since the second quarter of 2010.

¹² 15 AAC 125.075(a)(2).

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

¹⁴ *See* 15 AAC 125.080.

¹⁵ This is the combined amount that Mr. D pays for cable television (\$115) and miscellaneous expenses (\$200).

fully justified. Moreover, Mr. D testified that in addition to his own family, he provides support for his grandchildren. While it might appear, in light of these obligations, that a monthly support obligation of \$408 or \$297 is beyond his means, the household income, including his wife's income, appears to be around \$3,600.¹⁶ The total household income thus seems adequate to meet his obligation for arrears and for ongoing support in the amount of \$297 per month.

IV. Conclusion

Mr. D did not show that the presumptive child support obligation for arrears or ongoing support is manifestly unjust. Arrears and ongoing support should therefore be set at the presumptive amount.

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated May 9, 2011 is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated May 9, 2011, is **AFFIRMED**:

1. Mr. D's arrears are set at \$408 per month from September through December, 2010, and at \$297 per month from January through August, 2011.
2. Mr. D's ongoing child support is set at \$297 per month, effective September 1, 2011.

DATED: August 4, 2011

Signed

Andrew M. Hemenway
Administrative Law Judge

¹⁶ Mr. D's wife earns \$1,200-500 per month. A take home pay of about \$1,000 per month seems a reasonable estimate.

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 23rd day of August, 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.]