

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

IN THE MATTER OF)	OAH No. 11-0243-CSS
M A. W)	CSSD No. 001162814
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is M A. W's appeal of an order issued by the Alaska Child Support Service Division (Division). That order established his child support obligation for his daughter, C. On July 14, 2011 and on July 20, 2011, a formal hearing was held on Mr. W's appeal.¹ The custodial parent, K H, participated. Mr. W was represented by his wife, T W, because Mr. W is presently deployed to Iraq. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on September 1, 2011.

Having reviewed the record in this case and after due deliberation, I concluded that the amounts set in the Division's Amended Administrative Child and Medical Support Order should be adjusted in accordance with new calculations that were discussed at the hearing. These new calculations give Mr. W the appropriate deduction for supporting his older children plus a deduction for supporting his older child in his home. Based on these calculations, Mr. W's 2011 arrears and ongoing child support is set at \$551 per month.

II. Facts

Ms. H applied for public assistance for her child, C, in January of 2009. Paternity is not now in dispute. Mr. W's is named as C's father on the child's birth certificate.²

The Division issued an Administrative Child and Medical Support Order on January 5, 2011.³ Mr. W requested an administrative review.⁴

The Division issued an Amended Administrative Child and Medical Support Order on May 5, 2011. In this order, the Division set Mr. W's ongoing child support at \$913 per month.

¹ The hearing was held under Alaska Statute 25.27.170.

² Division's Pre-hearing Brief, page 1 & Recording of Hearing.

³ Exhibit 3.

⁴ Exhibit 4.

The order also set monthly arrears going back to January of 2009.⁵ Mr. W requested a formal hearing.⁶

At the hearing, both Ms. W and Ms. H provided information about their household circumstances. Ms. W explained that her family's financial circumstances were under considerable stress. Mr. W is active duty in the military. Mr. W earned \$32,195 in 2010, but his total income, including his employer provided benefits, was \$63,381.49.⁷ Ms. H makes about \$32,000 per year and has to borrow money from her mother to make ends meet. C has special medical problems that require her to be taken to have her eyes and her development checked frequently.⁸

Mr. W has an older child, K, living in his home. There is a court child support and child custody order giving primary custody to K's mother and awarding her child support from Mr. W. With the agreement of K's mother, however, K has been living with Mr. W since September of 2010, but Mr. W continues to pay child support for K to K's mother. Mr. W plans to petition for a change to the custody and child support orders once K has been living with him for another six months in accordance with his military attorney's advice.⁹

Mr. W also pays ongoing child support for two other older children of another prior relationship. This means that Mr. W's total child support obligation for his three older biological children is \$1,092 per month. Mr. W also has two stepchildren living with him. Ms. W receives no child support for one of her children, Mr. W's stepchild, because the father is not known. Ms. W receives only \$146 per month in child support for Mr. W's other stepchild. Ms. W is not currently working.¹⁰

After the hearing, the Division filed new calculations. The calculation using Mr. W's 2009 income with a deduction for his child support obligation for his three older children is \$503 per month.¹¹ The calculation using Mr. W 2010 income with a deduction for his child support obligation for his three older children but not for supporting K in his home is \$744 per month.¹² The calculation using Mr. W's 2010 income with a deduction for his child support obligation for

⁵ Exhibit 5.

⁶ Exhibit 6.

⁷ Recording of Hearing-Testimony of Ms. W & Exhibit 10, page 1.

⁸ Recording of Hearing-Testimony of Ms. H.

⁹ Recording of Hearing-Testimony of Ms. W.

¹⁰ Recording of Hearing-Testimony of Ms. W & Exhibit 10, page 1.

¹¹ Exhibit 16.

¹² Exhibit 11.

his three older children and for supporting K in his home is \$551 per month.¹³ The calculation using Mr. W's estimated 2011 income with a deduction for his child support obligation for his three older children and for supporting K in his home is \$520 per month.¹⁴

Based on the evidence in the record, I find that it is more likely than not that these new calculations are correct and that the income and deductions used in these calculations are correct.¹⁵

III. Discussion

Mr. W argued that his child support order should be lower than the amount set by the Division. In a child support hearing, the person who filed the appeal, in this case Mr. W, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁶ Mr. W met his burden to show that the Division's calculation of his arrears and ongoing child support were set too high. Under Alaska law Mr. W child support should be calculated based his income unless there is a showing by clear and convincing evidence that a variance of the calculated amount based on the child support guidelines is needed to prevent an injustice.¹⁷ Neither parent showed by clear and convincing evidence that it would be manifestly unjust to set Mr. W's child support based on his income with deductions for paying child support for his older children and for supporting one of his older children in his home.

Alaska law gives a deduction from income for the purposes of calculating child support for supporting in the home a child of a prior relationship for a child born or adopted before the child of the order.¹⁸ Mr. W should be allowed a deduction for his support for his older child K in his home, beginning in September of 2010.

Alaska law also gives a deduction for the purposes of calculating child support for paying court ordered child support for a child of a prior relationship for a child born or adopted before the child of the order. Mr. W is entitled to a deduction for the child support he pays for his three older children, including K under the language of child support rule.¹⁹ The duty to pay child

¹³ Exhibit 12.

¹⁴ Exhibit 16.

¹⁵ Recording of Hearing & Exhibit 11,12 & 16.

¹⁶ Alaska Regulation 15 AAC 05.030(h).

¹⁷ See Alaska Civil Rule 90.3(c) for the standards to establish good cause to vary the presumptive child support amount.

¹⁸ Alaska Civil Rule 90.3, Commentary III.D.

¹⁹ Alaska Civil Rule 90.3, Commentary III.D.

support generally follows the court order for custody even if custody changes. Mr. W has a legal duty to pay child support for K until the court orders for custody and support are modified. These orders do not, however, make him ineligible for the deduction he is entitled to for supporting K in his home during the period that those orders remain in effect unless Mr. W's failure to diligently pursue modification of those orders would make it clearly unjust to give him this deduction at C's expense.

The Division argued that Mr. W is not entitled to deductions both for paying child support for K and for supporting her in his home, but the rule provides deductions for both these expenses and the circumstances that create these deductions are not an unusual circumstance. There is a child support and custody order that creates a deductible expense for Mr. W. He and K live together in a different state than the state with jurisdiction over these orders. During this transition period when he has custody of K, but has been advised to wait until his state of residency has jurisdiction over K's custody, Mr. W also is put to the additional expense of having to pay for her support in his home, while still having to pay her mother's court ordered child support. It often takes a significant period of time to get a child custody order changed.

Under the circumstance of this case it would also be unjust not to give Mr. W a deduction for both of these unavoidable expenses he is paying to provide for his older daughter. Mr. W's household finances are stretched. The Alaska Civil Rules indicate that Mr. W's pre-existing duty obligation to provide for his older daughter takes precedence over his duty to pay more support for his younger child C, just as those rules give his obligation to C precedence over his duty to provide support for his wife and stepchildren.

Alaska law does not give a deduction from income for the purposes of calculating child support for supporting stepchildren in his home from his support obligation. Mr. W therefore is not entitled to a reduction in his child support for the support he provides for Ms. W's children.²⁰

IV. CHILD SUPPORT ORDER

1. Mr. W's ongoing child support for C is at \$520 per month effective November 1, 2011.
2. Mr. W is liable for child support arrears for C in the monthly amounts of \$503 for the months of January through December of 2009; \$744 for the months of January 2010 through August

²⁰ Alaska Civil Rule 90.3, Commentary VI.B2.

3. 2010; \$551 for the months of September through December of 2010; and \$520 for the months of January 2011 through October 2011.
4. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for C.
5. All other provisions of the Amended Administrative Child and Medical Support Order issued on May 5, 2011 remain in effect.

DATED this 21st day of October, 2011.

By: Signed
Mark T. Handley
Administrative Law Judge

DECISION BY THE COMMISSIONER FOLLOWS BELOW

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

IN THE MATTER OF)	OAH No. 11-0243-CSS
M A. W)	CSSD No. 001162814
)	
_____)	

DECISION BY THE COMMISSIONER

After due deliberation, having reviewed the record, the proposed order and the proposals for action in this matter, the Commissioner of Revenue adopts the factual findings but amends the conclusions of law and adjusts the monthly amounts set in the administrative law judge’s October 21, 2011 proposed decision and order in this matter. These changes are made in accordance with the final decision maker’s authority under Alaska Statute 44.64.060(e)(5) to amend an interpretation of law, and in accordance with the final decision maker’s authority under Alaska Statute 44.64.060(e)(3) to revise an order.

These changes are necessary because some of the amounts set in the proposed order are calculated based on the legal interpretation that Mr. W is entitled to deductions both for supporting his older child in his home and for the child support that he pays for her. A child support obligor who is both supporting an older child in his home and paying child support for that older child is not generally entitled to deduction for both of these expenses for the same child when calculating child support for a younger child of a different relationship.

While the commentary to Alaska Civil Rule 90.3 provides deductions for both of these types of expenses, it does not explicitly provide that an obligor would be entitled to both of these deductions for these expenses for the same older child.²¹ Eligibility for both deductions for the same child should not be inferred from the language of the portion of the commentary that provides for these deductions because most obligors will have only one or the other of these expenses for a particular child at one time. In Mr. W’s case, the older child’s mother is supposed to be supporting the child in her home under a court custody order. Under that order, Mr. W is required to pay the child’s mother child support. Mr. W decided to have his older daughter live with him while he is paying her mother child support, but this added expense is not legally

²¹ Alaska Civil Rule 90.3, Commentary III.D.

required, unavoidable, or incurred for the benefit of C, the child of the order. Granting both deductions would also provide less incentive for Mr. W to diligently pursue a change to his older daughter's custody order and force his younger daughter, C, to bear the cost of any delay.

This final decision, therefore, revises the legal interpretation in the proposed decision that gave Mr. W a deduction for supporting his older daughter in his home and makes conforming changes to the proposed decision as set out below in A through E.

- A. In the "Introduction" section on page 1 the last two sentences of the second paragraph are stricken and replaced with the following:

These are the new calculations that give Mr. W the appropriate deduction for paying child support for his older children but no deduction for supporting his older child in his home. Based on these calculations, Mr. W's arrears are set at \$503 for the months of January through December of 2009; \$744 for the months of January 2010 through August 2010; and \$551 for the months of September through November 2011. Ongoing child support is also set at \$551 per month.

- B. In the "Discussion" section on page 3 the last sentence of the first paragraph is stricken and replaced with the following:

Neither parent showed by clear and convincing evidence that it would be manifestly unjust to set Mr. W's child support based on his income with deductions for paying child support for his older children, with no deduction for supporting one of his older children in his home.

- C. In the "Discussion" section on page 3 the last sentence of the second paragraph is stricken and replaced with the following:

However, Mr. W should not be allowed a deduction for his support for his older child K in his home, because he is paying child support for that child under a court custody and child support order which provides that the child will be in the primary custody of her mother.

- D. In the "Discussion" section on page 4 the last sentence of the first full paragraph and second and third full paragraphs are stricken.

E. In the “Child Support Order” section on page 4 the Numbers “1” and “2” of the order are stricken and replaced with the following:

1. Mr. W’s ongoing child support for C is at \$551 per month effective December 1, 2011.
2. Mr. W is liable for child support arrears for C in the monthly amounts of \$503 for the months of January through December of 2009; \$744 for the months of January 2010 through August 2010; and \$551 for the months of September 2010 through November of 2011.

This Decision and Order as modified above in A through E 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 29th day of November, 2011

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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