

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

IN THE MATTER OF)	
)	OAH No. 11-0277-CSS
X J. J)	CSSD No. 001169226
_____)	

DECISION AND ORDER

I. Introduction

This case is Mr. X J. J's appeal of the Division's order establishing his monthly child support obligation his child, L. On June 28, 2011, a formal hearing was held to consider Mr. J's appeal.¹ Mr. J participated in the hearing. L's mother, the custodial parent, O J, did not participate.² Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on June 28, 2011.

At the hearing, the Division agreed that Mr. J's arrears for 2011 and his ongoing child support should be lowered to \$107 per month in accordance with the Division's latest calculations, which base Mr. J's child support on an estimate of his actual earnings in 2011 plus a PFD.

II. Facts

Ms. J received grants of public assistance for L for the months of July through November of 2010.³ The Division issued an Administrative Child and Medical Support Order on January 19, 2011.⁴ Mr. J requested an administrative review of that order.⁵

The Division issued an Amended Administrative Child and Medical Support Order on March 29, 2011.⁶ The Division set Mr. J's ongoing child support for L at \$425 per month. The order also established arrears going back to July of 2010 in the same monthly amount.

Mr. J requested a modification of that order, which was denied and then Mr. J requested a formal hearing, explaining that he has not been working due to medical problems. The parties agreed to treat the formal hearing request as an appeal of the Amended Administrative Child and

¹ The hearing was held under Alaska Statute 25.27.170.
² Ms. J was called at the time set for the hearing, but she decided not to participate.
³ Exhibit 4, page 7 & Recording of Hearing.
⁴ Exhibit 2.
⁵ Exhibit 3.
⁶ Exhibit 4.

Medical Support Order issued on March, 2011.⁷

At the hearing, Mr. J explained his employment and medical history. Mr. J also provided a letter from his doctor explaining Mr. J's recent medical history.⁸ Mr. J had been working in remote locations in Alaska on seismic surveys. Mr. J had to stop work in March because he needed hip replacement surgery. There were complications with the surgery on his first hip, but now Mr. J is recovering and hoping to schedule surgery on his second hip soon. Mr. J does not think he will be recovered from both surgeries until after the end of the year. Mr. J also needs knee surgery, but he is planning to put that surgery off so that he can return to work sooner. Mr. J is 63 years old and has applied for social security so that his medical expenses will be covered, but he has not yet started receiving benefits.⁹

The Division filed new calculations based on this information. The Division determined that Mr. J's 2011 arrears and ongoing monthly child support should be set at \$107 per month based the best estimate of Mr. J's income for 2011, given the fact that he has been unable to work since March of 2011.¹⁰ At the hearing, Mr. J and the Division agreed that his arrears for 2010 had been correctly set at \$425 based on his 2010 income, but that his ongoing child support and 2011 arrears should be set at \$107 per month in accordance with these new calculations.¹¹

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.¹²

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. J, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹³ Mr. J agreed that his 2010 arrears were correct and met his burden in showing that the 2011 arrears and ongoing child support should be adjusted.¹⁴

If L receives CIB payments because of Mr. J's social security benefits, Mr. J should ask for a modification. As explained at the hearing, most parents who are living on Social Security

⁷ Recording of Hearing & Exhibits 5-9.

⁸ Exhibit. A.

⁹ Recording of Hearing -Testimony of Mr. J.

¹⁰ Ex. 10 & Recording of Hearing.

¹¹ Recording of Hearing.

¹² Recording of Hearing & Ex. 10.

¹³ Alaska Regulation 15 AAC 05.030(h).

¹⁴ Recording of Hearing.

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. If L receives CIB payments as the result of Mr. J's social security, the CIB payments will be credited against Mr. J's monthly child support obligation.¹⁵ This means that at least part of Mr. J's child support obligation would effectively be paid by Social Security. CIB payments are often higher monthly payments than the amount of ongoing monthly child support.

IV. Conclusion

Mr. J's monthly child support arrears for 2010 should remain at \$425 based on his income for that year. Mr. J's monthly child support arrears for 2011 and ongoing should be set at \$107 in accordance with the Division's latest calculations.

V. CHILD SUPPORT ORDER

1. Mr. J's ongoing child support for L is set in the monthly amount of \$107, effective September 1, 2011.
2. Mr. J's child support arrears for L are set in the monthly amount of \$107 for the months of January through August of 2011; and in the monthly of \$425 for the months of July through December of 2010.
3. All other provisions of the Amended Administrative Child and Medical Support Order issued on March, 2011 remain in effect.

DATED this 1st day of August, 2011.

By: Signed
Mark T. Handley
Administrative Law Judge

¹⁵ *Miller v. Miller*, 890 P2d 574 (Alaska 1995).

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 25th 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.]