

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

IN THE MATTER OF	)	OAH No. 11-0333-CSS
D S. R	)	CSSD No. 001168723
	)	
_____	)	

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

**I. Introduction**

This case is Mr. D S. R's appeal of the Division's order establishing his monthly child support obligation for his children, K and B. On September 15, 2011, a formal hearing was held to consider Mr. R's appeal.<sup>2</sup> Mr. R was represented at the hearing by his mother, V O, who has Mr. R's power of attorney. K and B's mother, the custodial parent, K B, 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 at the end of the hearing.

At the hearing, Ms. O and the Division agree that Mr. R's arrears beginning in April of 2011 and his ongoing child support should be lowered to \$50 per month because he is in jail, but that his arrears for the first three months of 2011 should be set at \$379 in accordance with the Division's latest calculations, which base Mr. R's child support on an estimate of his actual earnings in first half of 2011 with no PFD.

**II. Facts**

Ms. B applied for public assistance medical for K and B beginning in June of 2010.<sup>4</sup> The Division issued an Administrative Child and Medical Support Order on January 7, 2011.<sup>5</sup> This first order set Mr. R's ongoing child support for K and B at \$344 per month. The order also

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<sup>1</sup> In the Matter of D S. R Decision and Order was issued and distributed to the parties. The parties did not file proposals for action and the decision was adopted. However, it has been discovered that there was a typographical error in the order, that is, the first line of the second part of the order on page three failed to print. Therefore, this corrected decision is issued in place of the original and is adopted as the final decision in this matter. The correction appears 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 provide a number to call at the time scheduled for the hearing as directed in the notice sent to her and there was no answer at her phone number of record when she was called at the time set for the hearing.

<sup>4</sup> Exhibit 5, page 10 & Recording of Hearing.

<sup>5</sup> Exhibit 2.

established arrears going back to June of 2010.<sup>5</sup>

Mr. R requested an administrative review.<sup>6</sup> The Division issued an Amended Administrative Child and Medical Support Order issued on August 9, 2011. This order set Mr. R's ongoing child support for K and B at \$227 per month. The order also established arrears going back to June of 2010.<sup>7</sup> Mr. R requested a formal hearing.<sup>8</sup>

At the hearing, Ms. O explained Mr. R's employment history. Mr. R has been in jail since April of 2011 and is serving a three year sentence for a felony conviction.<sup>9</sup>

At the hearing, the Division made new calculations based on this information. The Division determined that Mr. R's 2011 arrears starting in April and his ongoing monthly child support should be set at \$50 per month based on Mr. R's lack of income, given the fact that he has been unable to work since his arrest in April of 2011.<sup>10</sup>

At the hearing, Ms. O and the Division agree that Mr. R's arrears for 2010 had been correctly set at \$274 based on his 2010 income, but that his child support arrears for the months of January, February and March of 2011 should be set at \$379 per month in accordance with the Division's new calculations based on his annualized earnings for the first half of 2011.<sup>11</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>12</sup>

### **III. Discussion**

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

### **IV. CHILD SUPPORT ORDER**

1. Mr. R's ongoing child support for K and B is set in the monthly amount of \$50, effective October 1, 2011.

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<sup>5</sup> Exhibit 2.  
<sup>6</sup> Exhibit 3.  
<sup>7</sup> Exhibit 4.  
<sup>8</sup> Exhibit 5.  
<sup>9</sup> Recording of Hearing -Testimony of Ms. O.  
<sup>10</sup> Recording of Hearing.  
<sup>11</sup> Recording of Hearing.  
<sup>12</sup> Recording of Hearing & Ex. 5.  
<sup>13</sup> Alaska Regulation 15 AAC 05.030(h).  
<sup>14</sup> Recording of Hearing.

2. *Mr. R's child support arrears for K and B are set in the monthly amount* of \$274 for the months of June through December of 2010; \$379 for the months of January through March of 2011; and \$50 for the months of April through September of 2011.
3. The Division correctly gave Mr. R a \$300 credit for direct payments of child support.
4. All other provisions of the Amended Administrative Child and Medical Support Order issued on August 9, 2011 remain in effect.

DATED this 26<sup>th</sup> day of October, 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 26<sup>th</sup> day of October, 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.]