

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

IN THE MATTER OF)	
L L. O)	OAH No. 11-0352-CSS
_____)	CSSD No. 001171661

DECISION AND ORDER

I. Introduction

This case is L L. O’s appeal of an order issued by the Alaska Child Support Service Division (Division). That order established his child support obligation for his children, Z and B. On September 28, 2011, a formal hearing was held on Mr. O’s appeal.¹ Administrative Law Judge Mark T. Handley heard the appeal. The custodial parent, H L. B, did not participate in the hearing.² Mr. O was represented by his attorney Chad Hutchinson.³ 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.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that the Division’s Amended Administrative Child and Medical Support Order should be adjusted. Mr. O owes no ongoing child support because he has custody in an arrangement approved and monitored by the Alaska Office of Children’s Services. Mr. O’s arrears going back to November of 2010 must also be removed because he has exercised primary custody of the children since before November 1, 2010, and there has been no custody order or agreement in effect. As a result, Mr. O is not liable for any arrears for the period covered by this administrative child support order.

II. Facts

Ms. B applied for public assistance for her children, Z and B, in November of 2010. Paternity is not in dispute. Mr. O is named as Z and B’s father on their birth certificates.⁴

At the hearing, Mr. O explained that he lived with Z and B from before November of 2010 through the present. Mr. O and Ms. B both have had substance abuse problems, but Mr. O

¹ The hearing was held under Alaska Statute 25.27.170.
² Ms. B did not appear at the hearing or provide a phone number as directed by the notice sent to her at her address of record. Ms. B did not answer her phone numbers of record at the time set for the hearing.
² Mr. O also brought witnesses to the hearing. His mother, Rene O, testified.
⁴ Division’s Pre-hearing Brief, page 1 & Exhibit 2, page 10.

has been in recovery since before the effective date of this order. Mr. O believes that Ms. B has not been working and has been homeless during that period. He has had difficulty contacting her to arrange for her to visit the children.⁵

Ms. B only has had a few short supervised visits with Z and B at McDonald's since November of 2010. Mr. O and his mother believe that Ms. B's substance abuse problems were ongoing.⁶

Despite Mr. O having had custody of Z and B since November of 2010, the Division records show that Ms. B applied for and received public assistance grants for Z and B from November 2010 through February of 2011.⁷ Ms. B filed a request to withdraw from the Division's services on February 11, 2011.⁸

The Division initiated a child support order to establish Mr. O's child support obligation because of the public assistance application filed by Ms. B.⁹ The Division issued an Administrative Child and Medical Support Order on April 22, 2011. The order set total arrears of \$755, charging Mr. O arrears for the months of November of 2010 through February of 2011. In this order, the Division set Mr. O's ongoing child support at \$397 per month for both children effective March 1, 2011.¹⁰

Mr. O requested an administrative review. Mr. O included documentation from witnesses regarding custody. Mr. O explained the custody situation for Z and B during the period covered by the order.¹¹

The Division upheld its Administrative Child and Medical Support Order in an Administrative Review Decision issued on August 11, 2011.¹² Mr. O requested a formal hearing.¹³ Mr. O provided additional information on the custody situation prior to the hearing, including a letter from the Alaska Office of Children's Services explaining the custody situation since April 16, 2011.¹⁴

⁵ Exhibit 5, page 3 & Recording of Hearing –Testimony of Mr. O and Ms. O.

⁶ Recording of Hearing –Testimony of Mr. O and Ms. O.

⁷ Exhibit 2, page 10 & Recording of Hearing –Testimony of Mr. O.

⁸ Exhibit 1.

⁹ Division's Pre-hearing Brief, page 1.

¹⁰ Exhibit 2.

¹¹ Exhibit 3.

¹² Exhibit 4.

¹³ Exhibit 5.

¹⁴ Exhibit 5.

At the hearing, Mr. O and his mother described the custody situation since November 1, 2011.¹⁵

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations of Mr. O's ongoing monthly child support amount based on his estimated income are correct. These calculations indicate that Mr. O's monthly ongoing child support should be set at \$397 per month. Mr. O has had primary custody of Z and B since November 1, 2011.¹⁶

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. O had the burden of proving by a preponderance of the evidence that the Division's order was incorrect.¹⁷ Mr. O met his burden to show that his child support order arrears should be adjusted to show no liability for arrears for the months covered by this order, and does not owe any ongoing child support as long as he continues to live with Z and B.

At the hearing the Division agreed that the order should be adjusted to remove arrears for the months that Mr. O has had primary custody and indicate that ongoing child support is not due from Mr. O as long as this custody situation continues. The Division agreed to send Mr. O an application to request that the Division's services to establish a child support order for Ms. B and begin to attempt to collect child support from her.

IV. CHILD SUPPORT ORDER

1. Mr. O has no ongoing child support obligation for Z and B as long as he continues to live with them.
2. Mr. O's ongoing monthly child support obligation for Z and B, which will be collected if he stops living with the children, is \$397 for two children and \$294 for one child, effective November 1, 2011.
3. Mr. O is liable for child support arrears for Z and B in the monthly amount of \$0 for the month of November 2010 through October 2011 because he exercised primary custody of Z and B during this period.

¹⁵ Recording of Hearing.

¹⁶ Exhibit 2 & Recording of Hearing.

¹⁷ Alaska Regulation 15 AAC 05.030(h).

4. All other provisions of the Administrative Child and Medical Support Order issued April 22, 2011 and the Administrative Review Decision issued on August 11, 2011, remain in effect.

DATED this 6th 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 26th 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.]