

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

IN THE MATTER OF )  
J A.W ) OAH No. 11-0376-CSS  
) CSSD No. 001174728  
\_\_\_\_\_)

**DECISION AND ORDER**

**I. Introduction**

This case is J A. W appeal of an order issued by the Alaska Child Support Service Division (Division). That order established his child support obligation for his child, D. On October 13, 2011 and October 19, 2011, a formal hearing was held on Mr. W’s appeal.<sup>1</sup> The custodial parent, C D. D-Q, participated. Mr. W also participated. Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on October 28, 2011.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concluded that the amounts set in the Division’s Amended Administrative Child and Medical Support Order should be adjusted in accordance with the new calculations at Exhibits 11 and 12. These new calculations are based on the Division’s estimate of Mr. W’s 2011 income based on updated information and give Mr. W the appropriate deduction for paying into retirement. Based on these calculations, Mr. W’s ongoing child support is set at \$569 per month. Mr. W’s child support arrears going back to April of 2011 are set at \$637 per month.

**II. Facts**

Ms. D-Q applied for public assistance for her child, D, in April of 2011.<sup>2</sup> Paternity is not in dispute.<sup>3</sup>

The Division served Mr. W with an Administrative Child and Medical Support Order on May 9, 2011. In this order, the Division set Mr. W’s ongoing child support at \$790 per month. The order also set monthly arrears in that amount going back to April of 2011.<sup>4</sup> Mr. W requested an administrative review.<sup>5</sup>

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170.  
<sup>2</sup> Division’s Pre-hearing Brief, page 1 & Exhibit 4, page 10.  
<sup>3</sup> Division’s Pre-hearing Brief, page 1, Exhibit 2-8. & Recording of Hearing.  
<sup>4</sup> Exhibit 1.  
<sup>5</sup> Exhibits 2.

The Division issued an Amended Administrative Child and Medical Support Order on August 29, 2011. Mr. W's child support before any credits or debits for providing health insurance coverage for D was set at \$656 per month<sup>6</sup>

Mr. W requested a formal hearing.<sup>7</sup> Prior to the hearing, the Division filed new calculations.<sup>8</sup> The Division also discussed these new calculations at the hearing. At the hearing, the Division argued that, in accordance with these new calculations, arrears and ongoing child support should be set at \$569 per month.<sup>9</sup>

Mr. W argued that his ongoing child support should be set lower based on his employer's decision to put him on salary starting in August of 2011. Mr. W provided a letter from his employer, M J. T, M.D., which was dated July 21, 2011. In this letter, Mr. W's employer provided information about Mr. W's earnings and wages, and explained that Mr. W was no longer working at No Name Hospital or working for an hourly wage, and that his full-time salary was \$41,000 per year. Mr. W admitted that he had earned more before these changes in August of 2011.<sup>10</sup>

At the hearing, Ms. D-Q explained her reasons for suspecting that Mr. W might be earning more than he had reported, but she did not provide persuasive evidence that contradicted the documentary evidence provided by Mr. W.<sup>11</sup>

After the hearing as requested, the Division filed new calculations based on updated income information provided by Mr. W. Division explained that its latest calculations for arrears beginning in April of 2011 and for ongoing child support and used an estimate of Mr. W's projected current income which was based on the updated income information provided in Mr. W's employer's letter. The estimate for April 2011 through July of 2011 is based on his annualized 2011 income for the months before August of 2011. These calculations result in monthly child support of \$569 per month beginning an August of 2011 and monthly child support from April of 2011 through July of 2011 of \$637. These calculations apply to the monthly amounts before credits for providing health insurance coverage are applied.<sup>12</sup>

Based on the evidence in the record, I find that it is more likely than not that these new

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<sup>6</sup> Exhibit 4.

<sup>7</sup> Exhibit 12.

<sup>8</sup> Exhibit 14.

<sup>9</sup> Recording of Hearing.

<sup>10</sup> Recording of Hearing-Testimony of Mr. W & Exhibit 10.

<sup>11</sup> Recording of Hearing & Exhibit 10.

calculations are correct and that the income used in these calculations is correct. Based on the evidence in the record, I also find that it is more likely than not that these calculations are based on the best estimate of Mr. W's 2011 and ongoing income and earning capacity.<sup>13</sup>

### **III. Discussion**

Mr. W argued that his child support should set 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.<sup>14</sup> Mr. W met his burden to show, and the Division agreed, that Mr. W's child support order should be adjusted in accordance with the Division's new calculations.

Child support should be set based the income earned when the child support will be paid.<sup>15</sup> The Division's latest calculations are based on the best estimate of Mr. W's 2011 and current income. Ms. D-Q may wish to request a modification if she obtains evidence that Mr. W income changes significantly from the amount used to set his ongoing child support. There is not yet persuasive evidence that Mr. W's ongoing child support should set based on annual earnings above \$41,000.

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

1. Mr. W's ongoing child support for D is at \$569 per month effective February 1, 2012.
2. Mr. W is liable for child support arrears for D in the monthly amounts of \$637 for the months of April 2011 through July 2011 and \$569 for the months of August 2011 through January 2012.
3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for D.
4. All other provisions of the Amended Administrative Child and Medical Support Order on August 29, 2011 remain in effect.

DATED this 12<sup>th</sup> day of January 2012.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>12</sup> Exhibits 11 & 12.

<sup>13</sup> Recording of Hearing & Exhibits 9-12.

<sup>14</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>15</sup> Alaska Civil Rule 90.3, Commentary III.E.

**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 1<sup>st</sup> day of February, 2012

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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