

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

IN THE MATTER OF)	
E W. C JR.)	OAH No. 12-0023-CSS
)	CSSD No. 001164539
_____)	

CORRECTED DECISION AND ORDER¹

I. Introduction

This case is E W. C’s appeal of an order issued by the Alaska Child Support Service Division (Division). That order established Mr. C’s child support obligation for the children, K, C and N. Several hearings were held in Mr. C’s appeal.² The custodian of record, H F. D the children’s maternal grandmother, did not participate in all of these hearings.³ Mr. C also participated as did his father. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearings were audio-recorded. The record closed on April 20, 2012.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge, finds that Mr. C is the biological father of the children K and C, but is not the biological father of the child N. The Administrative Law Judge concludes that Mr. C monthly child support for K and C should be set at \$112, in accordance with the Division’s latest calculations at Exhibit 14, and that the Division should be directed to give Mr. C the appropriate credit for Social Security Children’s Insurance (CIB) payments that K and C receive because of Mr. C’s eligibility for social security benefits.

II. Facts

The Division served an Administrative Child and Medical Support Order on Mr. C on September 19, 2011. In this order, the Division set Mr. C’s ongoing child support for K, C and

¹ A proposed Decision and Order in the Matter of E W. C was issued and distributed to the parties. The Division timely filed a proposal for action before the decision was adopted. The Division explained that there was a typographical error in the proposed order, that is, on the third part of the order on page three a “1” instead of a “2” was typed for the part covering the 2012 arrears incorrectly reading “\$112 for the months of January 2011 through May 2012 instead of “\$112 for the months of January 2012 through May 2012, so that it appeared that there were two monthly support amounts set for 2011. 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(a).

² The hearing was held under Alaska Statute 25.27.190.

³ Ms. D did not appear or answer her phone for the all of the hearings.

N at \$137 per month based on earnings, a PFD and disability benefits. This order also set arrears going back to November 2009, when the children first received public assistance.⁴ Mr. C filed a request for an Administrative Review.⁵ Paternity was in dispute. Mr. C was named as the father on K, C and N's birth certificates. Mr. C requested genetic testing. In an Administrative Review Decision dated January 18, 2012, the Division affirmed its original order.⁶

Mr. C filed a request for a formal hearing explaining that he is currently disabled. During the hearing process, genetic testing was conducted. These tests showed that showed that Mr. C is the biological father of the children K and C, but is not the biological father of the child N.⁷ The Division and Mr. C were also able to establish that K and C's eligibility for CIB payments because of Mr. C's eligibility for social security benefits.⁸ The Division recalculated Mr. C's ongoing child support based on his current income. Mr. C is disabled and his income is limited to the benefits that he receives. At the hearing, the Division argued that, in accordance with these new calculations, ongoing child support should be set at \$112 per month before any CIB credit.⁹

Mr. C argued that his child support obligation should not include arrears the months of November 2009 through April 2010, because he was a custodial parent during those months the Division agreed.¹⁰

Based on the evidence in the record, I find that it is more likely than not that the Division's latest 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 Mr. C is the biological father of the children K and C, but is not the biological father of the child N , and that Mr. C had custody of N, K and C for the months of November 2009 through April 2010.¹¹

III. Discussion

Mr. C argued that the children were in his custody for some of the months during the period covered by this order by the Division. In a child support hearing, the person who filed the appeal, in this case Mr. C has the burden of proving by a preponderance of the evidence that the

⁴ Exhibit 1.

⁵ Exhibit 2.

⁶ Exhibit 3.

⁷ Exhibits 9-11.

⁸ Exhibit 13.

⁹ Exhibit 10.

¹⁰ Recording of Hearing & Exhibit 4.

¹¹ Recording of Hearing & Exhibits 9-14.

Division's order is incorrect.¹² Mr. C met his burden to show, and the Division agreed, that Mr. C's child support order should be adjusted in accordance with the Division's new calculations and that arrears for the months of November 2009 through April 2010 should be removed. Mr. C also showed that his modified child support should be reduced based on updated income information and changing his child support order from three children to two children, because N is not his child.

K and C will receive CIB payments because of Mr. C's social security benefits. Most parents who are living on social security 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. K and C receive CIB payments as the result of Mr. C's social security, the CIB payments should be credited against Mr. C's monthly child support obligation.¹³ This means that most or all of Mr. C's child support obligation will effectively be paid by Social Security.

IV. Conclusion

Mr. C's 2011 monthly child support arrears and ongoing child support should be adjusted in accordance with the Division's latest calculations. Child support arrears for months before May 2010 should be removed, as should Mr. C's obligation to provide support for the child N. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. C has no child support obligation for the child N.
2. Mr. C's ongoing child support for K and C is at \$112 per month effective June 1, 2012.
3. Mr. C is liable for child support arrears for K and C in the monthly amounts of \$50 for the months of May 2010 through December 2011 and \$112 for the months of January 2012 through May 2012.
4. The Division should give Mr. C the appropriate for credit CIB payments paid to K and C as the result of Mr. C's social security eligibility.
5. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for K and C.

¹² Alaska Regulation 15 AAC 05.030(h).

¹³ *Miller v. Miller*, 890 P2d 574 (Alaska 1995).

6. All other provisions of the Administrative Review Decision dated January 18, 2012 and the Administrative Child and Medical Support Order issued on August 25, 2010 remain in effect.

DATED this 12th day of June, 2012.

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 12th day of June, 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.]