

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

IN THE MATTER OF	)	
D A. W	)	OAH No. 12-0302-CSS
	)	CSSD No. 001162475
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This case is D A. W’s appeal of an order issued by the Alaska Child Support Service Division (Division). That order established Mr. W’s child support obligation for the child, Q. A hearing was held in Mr. W’s appeal on September 20, 2012. The custodial parent L X, the child’s mother, also participated in the hearing. Mr. W participated. Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on October 22, 2012.

Having reviewed the record in this case and after due deliberation the Administrative Law Judge concludes that Mr. W’s monthly child support for Q should be set at \$189 for August 2009 through and December of 2010; and \$216 per month for 2011, 2012 and ongoing. These calculations are based on the Division’s latest calculations, based on updated income information without imputing income for underemployment or under-reporting.

**II. Facts**

This case is Mr. W’s appeal of the Division’s order granting relief under Alaska Statute 25.27.195(b).<sup>1</sup> This law gives the Division’s limited authority to vacate administrative child support orders and retroactively adjust the monthly child support amounts due. This law gives the Division authority to retroactively adjust child support when the amount of monthly child support was set based on a default income figure rather than actual income. A default income figure is an amount arrived at in the absence of any specific information about an obligor's income and earning ability during the relevant time frames.<sup>2</sup> The Division granted Mr. W’s request for an adjustment, but he did not agree with the new monthly amounts.

The Division originally started the process of establishing a child support order for child support Q because an application for public assistance was filed on his behalf in August of 2009.

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<sup>1</sup> See Alaska Statute 25.27.195(b) & Alaska Regulation 15 AAC 125.121.

<sup>2</sup> See Alaska Regulation 15 AAC 125.121(j).

Paternity was established and the Division issued an Administrative Child and Medical Support Order in January of 2011. In that order, child support was set at \$755 per month based on the mean hourly wage of Auto Body workers because the Division did not have any actual income information for Mr. W.<sup>3</sup>

Mr. W filed a request to adjust his default order in July of 2011.<sup>4</sup> The Division issued a Vacate Administrative Child and Medical Support Order dated July 13, 2012. Based on the income information provided by Mr. W, which included tax returns, the Division had made new calculations, and adjusted Mr. W's arrears and ongoing child support in this order. In this order, the Division set Mr. W's ongoing child support for Q at \$258 per month based on imputed minimum wage earnings. This order also set arrears going back to August of 2009, the month that the application for public assistance.<sup>5</sup>

Mr. W filed a request for a formal hearing.<sup>6</sup> At the hearing, Mr. W explained that he was concerned that his ongoing child support had not been set using the correct income information and had not given him the proper deduction for supporting his older children in his home.<sup>7</sup>

After the hearing the Division filed new calculations.<sup>8</sup> These calculations result in a monthly child support obligation of \$216 for 2011, 2012 and ongoing. 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.<sup>9</sup>

Mr. W has his own automobile repair business. Several years ago he worked as a welder, but left that job after an on-the-job injury. Mr. W lives with his wife and six children in a house he built himself which he heats with firewood. At the hearing, Mr. W was concerned about how his child support obligation would impact his household finances. Mr. W explained that he has his wife and three step-children living with him plus three other of his own children living with him. Two of his children are older than Q.<sup>10</sup> Mr. W and Ms. X provided information about their household finances. Mr. W provided information about his work history. Ms. X provided reasons

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<sup>3</sup> Exhibit 1.  
<sup>4</sup> Exhibits 2 & 3.  
<sup>5</sup> Exhibits 4,5 & 6.  
<sup>6</sup> Exhibit 7.  
<sup>7</sup> Recording of Hearing.  
<sup>8</sup> Exhibit 9.  
<sup>9</sup> Recording of Hearing & Exhibit 9.  
<sup>10</sup> Recording of Hearing.

why she suspects that Mr. W may be under-reporting his income on his tax returns.<sup>11</sup>

### **III. Discussion**

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>12</sup> At the hearing, Mr. W met his burden to show that the Division had failed to give him the proper deduction for supporting his older children.

After the hearing as requested, the Division provided new calculations, based on his 2011 income as reported on his tax return, giving Mr. W the appropriate deduction for his older children. These calculations are based on updated income information provided by Mr. W. These calculations give Mr. W credit for the child support he pays for his biological children who are older than Q.

Mr. W is not entitled to a reduction in his child support obligation for Q due to his support of his younger biological child born after Q or for having step-children in his home. Alaska Civil Rule 90.3(a)(1)(C) provides a deduction from income for only child support payments arising from prior relationships. A companion provision of the rule, Civil Rule 90.3(a)(1)(D), provides that a parent is entitled to a deduction from income for the cost of providing support for children from prior relationships living with the parent.<sup>13</sup> This provision does not apply to step-children.

Under Alaska Civil Rule 90.3(a) &(c), Mr. W's legal duty to pay the correct percentage of his income toward the ongoing support of Q, takes precedence over his financial obligations to his step-children and his younger child.

At the hearing, Mr. W explained his reasons for choosing to stay in business for himself and rely on frugality and a subsistence lifestyle to support himself and his household on an income that is smaller than he might earn working for someone else. While this choice does not make it appropriate to impute income to Mr. W, because the evidence in the record does not show that Mr. W is unreasonably underemployed, there is not clear and convincing evidence that it would work an injustice to set Mr. W's child support for Q based on the actual income he earns rather than on a lower amount. The evidence in the record shows that Mr. W could earn more

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<sup>11</sup> Recording of Hearing.

<sup>12</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>13</sup> Civil Rule 90.3(a)(1)(D).

money than he does. It is just not to require Ms. X and Q to further subsidize Mr. W's lifestyle choice.

**IV. Conclusion**

Mr. W's 2011 and 2012 monthly child support arrears and ongoing child support should be adjusted in accordance with the Division's latest calculations. 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. W's ongoing child support for Q is at \$216 per month effective November 1, 2012.
2. Mr. W is liable for child support arrears for Q in the monthly amount of \$189 for August through December of 2009; \$189 per month for all of 2010; \$216 per month for all of 2011; and \$216 per month for January through October of 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 Q.

All other provisions of the Administrative Child and Medical Support Order dated July 13, 2012 remain in effect.

DATED this 29<sup>th</sup> day of October, 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 20<sup>th</sup> day of November, 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.]