

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

IN THE MATTER OF)	
)	
K I. J)	OAH No. 13-1069-CSS
_____)	CSSD No. 001180026

DECISION AND ORDER

I. Introduction

This case is K I. J's appeal of an administrative order establishing his child support obligation for his child, L, for the months of February 2011 through June of 2013. The Child Support Services Division (Division) issued this order. Mr. J's appeal was referred to the Office of Administrative Hearings and assigned to Administrative Law Judge Mark T. Handley.

On September 3, 2013 and October 10, 2013, a hearing was held to consider Mr. J's appeal. Mr. J participated. Mr. J's attorney is Fleur L. Roberts. The child was in state custody. The child's mother, N V. K, did not participate. The Division was represented by Erinn Brian, Child Support Services Specialist. The hearing was audio-recorded. The record closed on October 25, 2013.

Mr. J argued that child support court order, which started child support in September of 2011 was set too high based on the wrong income information.

Administrative Law Judge finds that Mr. J did not meet his burden to show that the income estimates in the Division's calculations were incorrect and concludes that the Division's Amended Administrative Child and Medical Support Order is affirmed.

II. Facts

On August 24, 2013, Mr. J's child, L was placed in state custody.¹ Paternity is not in dispute. Mr. J's paternity of L was established after genetic testing in a paternity order that was not appealed.²

The Division issued an Administrative Child and Medical Support Order on December 28, 2012.³ Mr. J appealed.⁴

The Division issued then an Amended Administrative Child and Medical Support Order

¹ Exhibit 1.
² Exhibits 1-3 & Recording of Hearing.
³ Exhibit 4.

on June 27, 2013. In this order, the Division set Mr. J's monthly ongoing child support obligation for L at \$197. This monthly ongoing child support obligation in this order was based on Mr. J's income from his native corporation dividends and his annuities. The Division's order also established arrears beginning in September of 2011.⁵

Mr. J requested a formal hearing to appeal the Division's order.⁶

The portion of the Division's order setting monthly ongoing child support obligation for L at \$197 after the month of June 2013 was superseded by a court custody and child support order issued on July 29, 2013 in case number 4XX-12-00000CI. This court order set Mr. J's monthly ongoing child support obligation for L at \$94.68 per month based on a shared custody calculation, giving Mr. J credit for having custody of L for 43% of the overnights per year.⁷

Mr. J's attorney explained that for the purpose of the appeal of the Amended Administrative Child and Medical Support Order was to show that the court order was intended to cover Mr. J's ongoing child support obligation effective July 1, 2013. Mr. J's attorney argued that the arrears for 2011 and 2012 should be set at \$390 per month, based on the \$2289 per month deposited in his bank account as a result of his annuity from his parent's estate. This calculation did not include Mr. J's income from his native dividends. Mr. J's attorney argued that these dividends should not be included as income for when calculating his child support for L because those dividends were withheld to pay for child support for Mr. J's children of a different relationship.⁸

III. Discussion

The Division asked that its Amended Administrative Child and Medical Support Order be affirmed. The Division acknowledged at the hearing that the court order supersedes its order for ongoing child support, but argued that the information provided by Mr. J supports the estimates of income used in the calculations for its Amended Administrative Child and Medical Support Order.

The Division is required to establish the month child support obligation beginning the

⁴ Exhibit 6.

⁵ Exhibit 8.

⁶ Exhibit 10.

⁷ Exhibit 9, page 2.

⁸ Recording of Hearing and Mr. J's attorney's email dated September 30, 2013, marked Exhibit A.

month that a child goes into state custody.⁹ In this case the administrative order was effective September 1, 2013, due to the state custody placement. The court order does not address child support for the months prior to July of 2013. The Division was required by law to establish child support for those months. The Division set child support at \$197 per month, for the months in 2013 when Mr. J was not sharing custody, prior to the effective date of the court order. For the months of 2011 and 2012 that are covered by the Division's order, the monthly amount was set at \$486.

In a child support hearing, the person who filed the appeal, in this case, Mr. J, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁰ Mr. J did not meet his burden of proof to show that the income estimates in the calculations used to set monthly amount in the Division's order were incorrect.

The Division correctly gave Mr. J a deduction only for the amount of ongoing child support for his older children that was actually collected during 2011 and 2012. The commentary to Alaska Civil Rule 90.3 at III.D. requires that child support for an older child is only deductible to the extent that it is actually paid and only to the extent the payment is for ongoing child support, rather than arrears. The fact that Mr. J's dividends were collected to go toward child support that could include arrears payments does not mean those dividends should not be counted as income for calculating child support.

The evidence in the record shows that the Division's estimate of the gross income that Mr. J received from his annuity is probably more accurate than Mr. J's. The Division's estimate makes the reasonable assumption that taxes were withheld from the annuities before those annuities were deposited in Mr. J's account, and then deducts taxes from the full annuity. Mr. J's estimate assumes that no taxes were withheld and then deducts taxes from the amounts deposited in his account. This effectively gives Mr. J a double deduction for his tax liability.

IV. Conclusion

I conclude that the Division correctly established and set the appropriate monthly amounts in its child support order for the months between the month that L was placed in state custody and the effective date of the court order establishing child support. The child support amounts in the Division's order were calculated using the primary custody formula in Civil

⁹ 15 AAC 125.105(a)(1).

¹⁰ Alaska Regulation 15 AAC 05.030(h).

Rule 90.3(a).

V. Child Support Order

The Division's Amended Administrative Child and Medical Support Order issued on June 27, 2013 is affirmed.

DATED this 4th day of December, 2013.

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 23rd day of December, 2013.

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

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