

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

IN THE MATTER OF)	OAH No. 13-1119-CSS
B Q)	CSSD Nos. 001126224/001185225
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is B Q's appeal of the Child Support Service Division's (Division's) child support order for his children, X, Y and Z.

On September 3, 2013, a formal hearing was held to consider Mr. Q's appeal.¹ Mr. Q participated in the hearing. The custodial parent, K A. C did not participate.² Russell Crisp, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on September 13, 2013.

Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be adjusted by setting Mr. Q's ongoing child support at \$50 per month.

II. Facts

This appeal is very complicated. There are actually two cases to cover state custody periods. For the purposes of this appeal both cases and all periods of support are covered. This case began as an add-a-child modification action.³ Mr. Q's child support for his children, Y and Z was previously last set in 2008 at \$473 per month.⁴ All the children are in state custody. The Division initiated a modification action to add X, because X also went into state custody.⁵ Mr. Q's paternity of X, the new child added to the order, is not in dispute.⁶ Mr. Q is named as X's father on his birth certificate.⁷

¹ The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.
² Ms. C did not appear or provide a phone number to call for the hearing as instructed in the notice sent to her. Ms. C did not answer at her phone number of record at the time set for the hearing.
³ Alaska Civil Rule 90.3(h) governs modification actions.
⁴ Exhibit 3 & the Division's Pre-Hearing Brief, page 1.
⁵ Exhibit 5.
⁶ Recording of Hearing.
⁷ Division's Pre Hearing Brief.

The Division then vacated the orders it had previously issued in these cases and issued an Administrative Child and Medical Support Orders on February 25, 2013.⁸ Mr. Q appealed and an Amended Administrative Child and Medical Support Orders on July 5, 2013.⁹

The Division's orders set Mr. Q's ongoing child support obligation at \$50 per month, effective April 1, 2010.¹⁰ Arrears were also established going back to 2007. Mr. Q requested a formal hearing.¹¹

At the time of the hearing, Mr. Q was incarcerated waiting trial. Mr. Q had provided medical records showing his disability.¹² Mr. Q explained that he was living with the children except for periods of incarceration and a short fishing job until he was hospitalized in a coma with encephalitis in February of 2011. Mr. Q admitted that there were short periods of incarceration for a few days each, never for a full month. Mr. Q also admitted that he was away from the home fishing from No Name, Alaska for two months in January and February of 2009, but he sent money home to support the children. Mr. Q explained that the children's mother may have kept him off the lease because of his criminal record. Mr. Q explained that he did not know that she had applied for public assistance. Mr. Q explained that he will not be able to apply for Social Security disability until he is released. Mr. Q admitted that he has memory problems due to his illness, but he did have a copy of his criminal record to refer to at the hearing.¹³

At the hearing, the Division requested and was given time to investigate the discrepancy between Mr. Q's testimony regarding his presence in the home except for two months prior to his hospitalization in 2011. The Division was given until September 13, 2013 to request to go back on the record, but did not file such a request.

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. Q, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁴ Mr. Q showed that his ongoing child support was correctly set at a minimum order and showed that

⁸ Exhibit 7.

⁹ Exhibits 9& 10.

¹⁰ Exhibit 9.

¹¹ Exhibit 11.

¹² Exhibit 9.

¹³ Recording of Hearing-Testimony of Mr. Q.

¹⁴ Alaska Regulation 15 AAC 05.030(h).

he was a custodial parent, living with his children until February of 2011.

IV. Conclusion

I conclude that Mr. Q's ongoing child support should be set at \$50 per month; his arrears prior to February 2011 should be removed except for the two month that he was fishing in January and February of 2009. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. Q owes ongoing child support for X, Y and Z in the monthly amount of \$50 for three children, effective December 1, 2013.
2. Mr. Q is liable for child support arrears in the monthly amount of \$50 for the months January and February of 2009 and for the months of February 2011 through November 2013.
3. The Division will divide the child support appropriately between the two cases Mr. Q's obligation for these children.
4. All other provisions of the Division's Amended Administrative Child Support and Medical Support Order issued on July 5, 2013 remain in effect.

DATED this 20th day of November 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 9th 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.]