

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

IN THE MATTER OF	)	OAH No. 13-1261-CSS
L K	)	CSSD No. 001158031
	)	
_____	)	

**DECISION AND ORDER**

**I. Introduction**

This case is L K’s appeal of an order issued by the Alaska Child Support Service Division (Division). That order established Mr. K’s child support obligation for his child, Z. Hearings were held in Mr. K’s appeal. The custodial parent W H, the child’s mother, participated in the hearings. Mr. K participated. Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. After the hearing, a post hearing order was issued. A late filed submission was made by the Division, which was accepted. The record closed on December 13, 2013.

Having reviewed the record in this case and after due deliberation the Administrative Law Judge concludes that Mr. K’s ongoing monthly child support for Z should be set at \$131 per month, and his arrears set in accordance with the Division’s latest calculations going back to December of 2010, the month that an application for public assistance was filed.

**II. Facts**

Paternity is no longer in dispute. Paternity was established in an administrative paternity order issued November 10, 2011. Genetic testing later confirmed Mr. K’s paternity of Z, and Mr. K did not contest those results.<sup>1</sup>

The Division issued an Administrative Child and Medical Support Order on December 8, 2012. Mr. K filed a request for an Administrative Review.<sup>2</sup>

The Division issued an Administrative Review Decision and Amended Administrative Child and Medical Support Order dated August 7, 2013.<sup>3</sup>

Mr. K filed a request for a formal hearing.<sup>4</sup> At the hearing, Mr. K explained that he was concerned that his child support had not been set using the correct income information. Mr. K

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<sup>1</sup> Recording of Hearing & Exhibits 2, 4, 5 & 7.

<sup>2</sup> Exhibits 3 & 4.

<sup>3</sup> Exhibit 6.

<sup>4</sup> Exhibit 7.

explained that he had been unemployed for some time and that he was a single parent, who had other children living with him in his home. At the hearing, the Division went over the household financial information provided by Mr. K and Ms. H.<sup>5</sup>

At the hearing, Mr. K explained that he had been laid off from his job as a radio announcer when his station went to pre-recorded music programs. Mr. K has been living on his unemployment benefits and plans to start a new job training program soon. Mr. K explained that he was told that he was not Z's father the period covered by the child support order.<sup>6</sup>

At the end the hearing the parties agreed that Mr. K would provide additional documentation and the Division would make new calculations based on the updated income information. A post hearing order was issued setting out the deadlines agreed to for these filings. Mr. K agreed to and set out in the order. The Division's filing was expected to be partly responsive to Mr. K's. After the hearing, Mr. K did not file the documentation as ordered. The Division's filing was filed after the deadline, but was accepted because the calculation was needed and Mr. K had not provided the required documentation prior to the deadline. The Division's new calculations resulted in an ongoing monthly amount of \$131 for Z.<sup>7</sup>

Based on the evidence in the record, I find that it is more likely that not that the Division's latest calculations at exhibit 10 are correct and use the best estimates of Mr. K's annual income during the relevant years. I also find that Mr. K did not provide clear and convincing evidence showing that to avoid an injustice, child support for Z must be set below the monthly amounts in the Division's latest calculations.<sup>8</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Mr. K has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>9</sup>

At the hearing, Mr. K explained his employment history and his household finances. Relying on this updated information, reported unemployment benefits and earnings reported by his employers, the Division's latest calculations are based on a better estimate of Mr. K income during the period covered by this order than the information that Division used to calculate Mr.

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<sup>5</sup> Recording of Hearing.

<sup>6</sup> Exhibit 8 & 10 & Recording of Hearing.

<sup>7</sup> Exhibit 10.

<sup>8</sup> Exhibit 10 & Recording of Hearing.

<sup>9</sup> Alaska Regulation 15 AAC 05.030(h).

K child support in its order. These calculations give Mr. K a deduction supporting his older children in his home.

A parent may obtain a reduction in the amount calculated in a primary custody calculation using the best income estimates only if he or she shows that “good cause” exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”<sup>10</sup> Mr. K did not provide clear and convincing evidence showing that to avoid an injustice, child support for Z must be set below the amounts in the Division’s latest calculations based on his income.

Mr. K’s other children are older than Z. Mr. K’s child support was reduced in the Division’s latest calculations providing a deduction for these children. Mr. K did not provide the ordered documentation showing the duration of time and the extent to which he has been supporting these children. There was some indication at the hearing that they had spent some time living with their mother. While Mr. K had reason to believe that he might not know that he was Z’s father when the child was born in 2004, during the period covered by this order beginning in December of 2010, Mr. K was on notice that he probably had a duty to provide child support for this child. Mr. K did not provide clear and convincing evidence that he was maximizing or reporting all his income. There was an indication that he had booked shows in the past from which it could be inferred that he may still be supporting himself with more than his unemployment.

Again, the preponderance of the evidence shows that the Division’s latest calculations use the best estimates of Mr. K’s income, but there is not clear and convincing evidence that the monthly amounts that result from using these estimates need to be further reduced to avoid an injustice. Mr. K simply failed to meet the burden of proof required for a variance of the Alaska child support guidelines under Civil Rule 90.3(c).

#### **IV. Conclusion**

Mr. K’s child support order setting his arrears and ongoing child support will 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).

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<sup>10</sup> Alaska Civil Rule 90.3(c).

**V. Child Support Order**

1. Mr. K’s ongoing child support for Z is at \$131 per month effective January 1, 2014.
2. Mr. K is liable for child support arrears for Z in the amounts of; \$131 per month for all of 2013; \$283 per month for all of 2012; \$243 per month for all of 2011; and \$356 per month for December of 2010.
3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for Z.

All other provisions of the Administrative Review Decision and the Amended Administrative Child and Medical Support Order dated August 7, 3013 remain in effect.

DATED this 17<sup>th</sup> 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 14<sup>th</sup> day of January, 2014.

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

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