

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

IN THE MATTER OF)	OAH No. 13-1291-CSS
T U)	CSSD No. 001179940
)	
_____)	

DECISION AND ORDER

I. Introduction

This case is T U’s appeal of the order establishing his child support for his child M. K M. N is the child’s mother and the custodial parent. The Child Support Services Division (Division) issued the child support order because of a period when the child was receiving public assistance. The Division set Mr. U’s arrears beginning in October 2011 through December at 2011 at \$377 per month, and \$975 per month for all of 2012, based on his annual incomes for those years, and at the minimum of \$50 per month based on his low income from January 2013 ongoing due to his incarceration.

Mr. U requested a formal hearing. This request was referred to the Alaska Office of Administrative Hearings. Administrative Law Judge Mark T. Handley was assigned to conduct the formal hearing. Several hearings were held to monitor the progress of genetic testing. The last hearing was held on November 26, 2013. Mr. U participated. K M. N also participated. Russell Crisp, Child Support Services Specialist, represented the Division. The hearing was audio-recorded. The record closed on December 4, 2013.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be upheld. Mr. U contested both paternity and the deduction he was given for his child support order for a child who is older than M. Mr. U’s paternity of M was confirmed by genetic testing. Mr. U’s 2011, 2012 and 2013 child support was set based on his income for those years. The law requires that child support for an older child may only be deducted when calculating a younger child’s monthly support to the extent that child support for the older child was actually paid.

II. Facts

This case is an establishment action.¹ The child support case was established by the Division because an application for public assistance was filed for M.²

Paternity is not now in dispute. Mr. U originally contested paternity but did not timely request genetic testing. The Division issued a default order establishing paternity on May 11, 2013. The Division later conducted genetic testing during the appeals process at Mr. U's request. After this genetic test showed that Mr. U's was M's biological father, Mr. U did not contest those findings.³

The Division issued an Administrative Child and Medical Support Order on June 26, 2012.⁴ Mr. U appealed the child support order.⁵

The Division issued an Amended Administrative Child and Medical Support Order on September 3, 2013.⁶ The Division set Mr. U's monthly arrears at \$377 for 2011, \$975 for 2012, and his monthly child support for 2013 and ongoing at \$50.⁷

Mr. U requested a formal hearing.⁸ At the hearing, Mr. U agreed to participate in genetic testing. Once paternity was shown by those tests, Mr. U's only remaining issue was the deduction given to him because of his child support obligation for his older child. Mr. U argued that he should have his full child support obligation for the older child deducted from his income, rather than the amount collected by the Division during the relevant years.⁹

Based on the evidence in the record, I find that the Division's calculations used to set his arrears and ongoing child support, and the income used in those calculations, were correct.¹⁰

III. Discussion

In a child support hearing, the person who filed the appeal, in this case, Mr. U, has the

¹ Alaska Civil Rule 90.3(a).

² Exhibit 1 & the Division's Pre-Hearing Brief, page 1.

³ Exhibits 1-4 & 13 & Recording of Hearing.

⁴ Division's Pre Hearing Brief, page 1 & Exhibit 3.

⁵ Exhibit 5.

⁶ Exhibit 9.

⁷ Exhibit 9.

⁸ Exhibit 10.

⁹ Recording of Hearing.

¹⁰ Exhibit 9 & Recording of Hearing.

burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹¹ Mr. U did not provide evidence showing that the Division's order was incorrect. Mr. U was primarily concerned about making sure he was M's father. Once the Division reported the genetic test results, Mr. U did contest those results.

There were no more factual issues in dispute after the genetic test results. Mr. U still argued that he should have his full child support obligation for the older child deducted from his income, rather than the amount collected by the Division, but he did not assert that the Division had used the wrong amounts in its calculations.¹² Whether those amounts should have been the amounts collected or the ongoing amounts due is a question of law.

The Division correctly set Mr. U's 2013 and ongoing child support at the minimum amount of \$50 per month based on Mr. U's continued lack of income. Alaska law requires that child support be set at no less than \$50 per month, and the Alaska Supreme Court has said that a minimum order is generally appropriate when an obligor is incarcerated.¹³

The Division correctly set Mr. U's arrears for 2011 at \$377 per month based on his reported income in 2011. The Division correctly set Mr. U's arrears for 2012 at \$975 per month based on his reported income in 2012. Child support is calculated based on annual income. The Division correctly gave Mr. U a deduction only for the amount of ongoing child support for his older child that was actually collected during those years. 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.

IV. Conclusion

I conclude that the Division correctly established a child support obligation in this case. The child support amount in the Division's order was calculated using the primary custody formula in Civil Rule 90.3(a) without variance.

¹¹ Alaska Regulation 15 AAC 05.030(h).

¹² Alaska Civil Rule 90.3(a).

¹³ See *Bendixen v. Bendixen*, 962 P.2d 170 (Alaska 1998) & *Douglas v. State, Department of Revenue* 880 P.2d 13 (Alaska 1994).

V. Child Support Order

The Division’s Amended Administrative Child and Medical Support Order issued on September 3, 2013 is affirmed.

DATED this 27th 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 14th 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.]