

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

IN THE MATTER OF)

M M. W B)

) OAH No. 14-0293-CSS
) CSSD No. 001192582

DECISION AND ORDER

I. Introduction

This case is M M. W B's appeal of an order issued by the Alaska Child Support Service Division (Division). That order established her child support obligation for her children, M and A.

On March 18, 2014, a formal hearing was held on Ms. W B's appeal.¹ Administrative Law Judge Mark T. Handley heard the appeal. The children's father, E P. D, did not participate in the hearing.² Ms. W B participated. Russell L. Crisp, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

Having reviewed the record in this case and after due deliberation, the Administrative Law Judge concludes that the Division's Amended Administrative Child and Medical Support Order should be adjusted. Ms. W B owes no ongoing child support because she has court ordered custody and court ordered ongoing child support from Mr. D. Ms. W B's arrears going back to June of 2013 must also be removed because she has had primary custody of the children since before Mr. D requested the Division's services.

As a result, Ms. W B is not liable for any arrears or ongoing child support at this time, but the Division correctly set her monthly child support obligation at \$262 for any period in the future should primary custody be transferred by the court to Mr. D.

II. Facts

Mr. D applied for the Division's services for his child, M and A, in June of 2013. Ms. W B is named as M and A's mother on their birth certificates.³

At the hearing, Ms. W B explained that she and Mr. D lived together from before M and

¹ The hearing was held under Alaska Statute 25.27.170.

² Mr. D did not appear at the hearing or provide a phone number as directed by the notice sent to him at his address of record. Mr. D did not answer his phone number of record at the time set for the hearing.

A's birth to April of 2011. After that month the children lived with Ms. W B but she and the children often visited her grandmother, where Mr. D lived in a cabin on the grandmother's property. Even when they visited there with their grandmother, the children spent 90 percent of the nights sleeping at the grandmother's house with Ms. W B. In 2013, Ms. W B became engaged to her present husband, which may have motivated Mr. D to apply for child support. There was a domestic violence incident, which led Ms. W B to obtain a temporary restraining order and custody against Mr. D in August of 2013. In October of 2013, Ms. W B obtained an interim court custody order. This order also limited Mr. D's contact and visitation with Ms. W B and the children. This order also establishes a child support obligation for Mr. D. Ms. W B has a permanent custody hearing scheduled in the end of March 2014. Mr. D has not appeared for any of the court custody proceedings.⁴

The Division initiated a child support order to establish Ms. W B's child support obligation because it received Mr. D's application for services in June of 2013.⁵

The Division issued an Administrative Child and Medical Support Order on August 12, 2013. The order set total arrears going back to June of 2013. In this order, the Division set Ms. W B's ongoing child support at \$250 per month effective September 1, 2013.⁶

Ms. W B requested an administrative review. Ms. W B included documentation showing the court order regarding custody.⁷

The Division issued an Amended Administrative Child and Medical Support Order and an Administrative Review Decision issued on January 23, 2014. This order set Ms. W B's monthly child support amount for the children at \$262 per month based on updated income information. This order sought no ongoing child support, but established arrears for the months of June, July and August of 2013. These are the months between Mr. D's request for services and the effective date of the court restraining and custody order.⁸

Ms. W B requested formal hearing.⁹ Ms. W B provided additional information on the custody situation in affidavits and at the hearing. At the hearing, the Division agreed that Ms. W B should not be charged arrears because the evidence shows that she has had primary custody of

³ Division's Pre-hearing Brief, page 1.

⁴ Recording of Hearing –Testimony of Ms. W B.

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ Exhibit 3 & 4.

⁸ Exhibit 7.

the children during the period covered by this order. The Division also agreed that ongoing custody has been set by court order, and that Ms. W B has no ongoing child support obligation as long as the children are in her custody.¹⁰

Based on the evidence in the record, I find that it is more likely than not that the Division's calculations of Ms. W B's ongoing monthly child support amount based on her actual income are correct. Ms. W B has court ordered custody and court ordered ongoing child support from Mr. D effective October of 2013. Ms. W B has had primary custody of M and A since before June of 2013.¹¹

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Ms. W B had the burden of proving by a preponderance of the evidence that the Division's order was incorrect.¹² Ms. W B met her burden to show that her child support order arrears should be zero.

There is really no dispute that the Division's order was incorrect. The Division's order sets arrears for Ms. W B during a period when there was no custody and order and the children were in her primary custody. The monthly child support amount calculated at \$262 will only go into effect if the court grants Mr. D primary custody and does not set ongoing child support.

IV. Conclusion

I conclude that ongoing child support should be set at \$262 per month for these two children, but there is no ongoing child support obligation as long as Ms. W B has primary custody. There are no arrears due. This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

V. CHILD SUPPORT ORDER

1. Ms. W B's has no ongoing child support obligation for M and A because they are in her custody by court order.
2. Ms. W B's ongoing monthly child support obligation for M and A will be \$262 if the court does not grant her primary custody and she no longer lives with the children.
3. This order will be superseded by any court child support order that covers the same period for these children.

⁹ Exhibit 8.
¹⁰ Recording of Hearing.
¹¹ Exhibit 9 & Recording of Hearing.
¹² Alaska Regulation 15 AAC 05.030(h).

4. Ms. W B is not liable for child support arrears for M and A.
5. All other provisions of the Administrative Child and Medical Support Order issued January 23, 2014, remain in effect.

DATED this 18th day of March 2014.

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 10th day of April, 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.]