

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

IN THE MATTER OF)	
H N. H)	OAH No. 14-0743-CSS
_____)	CSSD No. 001190230

DECISION AND ORDER

I. Introduction

This case is H N. H's appeal of an order issued by the Alaska Child Support Service Division (Division). That order established Mr. H's child support obligation for his child, B. Hearings were held in Mr. H's appeal. The custodial parent Z C. C, the child's mother, participated in the last of these hearings. Mr. H participated.

Andrew Rawls and James Pedergraft, Child Support Services Specialists, represented the Child Support Service Division (Division). The hearings were audio-recorded. After the hearing, a post hearing order was issued. A submission to the record was made by the Division. Neither parent filed a response. An order was issued re-opening the record. The Division filed new calculations. The record closed on December 18, 2014.

Having reviewed the record in this case and after due deliberation the Administrative Law Judge concludes that Mr. H's ongoing monthly child support for B should be set at \$592 per month, and his arrears set in accordance with the Division's latest calculations going back to September of 2012, the month that an application for public assistance was filed.

II. Facts

Paternity was, but is no longer, in dispute in this appeal. Paternity was established in a default administrative paternity order. Mr. H requested genetic tests as part of his appeal. Several status conferences were held to monitor the progress of genetic testing while the Division strove to get Ms. C's assistance in completing these tests. The genetic tests confirmed Mr. H's paternity of B. Mr. H did not contest those results.¹

The Division issued an Administrative Child and Medical Support Order on April 20, 2013. Mr. H filed a request for an Administrative Review.²

The Division issued an Administrative Review Decision and Amended Administrative

¹ Recording of Hearings & Exhibit 9.
² Exhibits 2 & 4.

Child and Medical Support Order dated April 11, 2014.³

Mr. H filed a request for a formal hearing.⁴

After the paternity issue was resolved through genetic testing, Mr. H explained that he was concerned that his child support had been set without giving the proper deductions for supporting his other children. At the hearing, the Division went over the household financial information provided by Mr. H.⁵

At the hearing, Mr. H explained that he has four children living with him in his home, but only two of these children are his biological children.⁶ Mr. H does not have any unusual expenses. He estimated that he spends \$180 per month on tobacco products. He has more than \$20,000 in medical debts that he is not currently making payments on.

Mr. H's older daughter, X lives with him, and the Division's latest calculations give him a credit for supporting her in his home.

At the end the hearing the parties agreed that the Division would make new calculations based on the updated income information and the parents were given a deadline to file a response to what the Division submitted. A post hearing order was issued setting out the deadlines agreed to for these filings. The Division's filing was timely and the parents did not file a response. An error in these calculations led to an order to re-open the record so that the Division could provide new calculations. The Division's latest calculations resulted in an ongoing monthly amount of \$592 for B.⁷

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations at exhibits 17, 18, 19 and 20 are correct and use the best estimates of Mr. H's annual income during the relevant years. I also find that Mr. H did not provide clear and convincing evidence showing that to avoid an injustice, child support for B must be set below the monthly amounts in the Division's latest calculations.⁸

III. Discussion

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

³ Exhibit 5.

⁴ Exhibit 6.

⁵ Recording of Hearings & Exhibit 10.

⁶ Exhibit 8 & 10 & Recording of Hearing.

⁷ Exhibit 17.

⁸ Exhibit 17, 18, 19 & 20 & Recording of Hearing.

burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁹

At the hearing, Mr. H explained his employment history and his household finances. Relying on this updated information, and earnings reported by his employers, the Division's latest calculations are based on a better estimate of Mr. H income during the period covered by this order than the information that Division used to calculate Mr. H child support in its order. These calculations give Mr. H a deduction supporting his older child. There are two different calculations for 2013 and 2014, because Mr. H was paying child support for his daughter under a shared custody order for part of those years.

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." ¹⁰ Mr. H did not provide clear and convincing evidence showing that to avoid an injustice, child support for B must be set below the amounts in the Division's latest calculations based on his income.

One of Mr. H's other children is older than B. Mr. H's child support was reduced in the Division's latest calculations providing a deduction for this child. Mr. H is not entitled to a deduction for supporting his younger child or his step children.

While Mr. H might have had reason to believe that he might be B's father when the child was born in 2012, during most of the period covered by this order beginning in November of 2013, Mr. H was on notice that he probably had a duty to provide child support for this child.

The evidence shows that the Division's latest calculations use the best estimates of Mr. H'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. H 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. H'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).

⁹ Alaska Regulation 15 AAC 05.030(h).

¹⁰ Alaska Civil Rule 90.3(c)

V. Child Support Order

1. Mr. H’s ongoing child support for B is at \$592 per month effective January 1, 2015.
2. Mr. H is liable for child support arrears for B in the amounts of; \$592 per month for the months of May through December of 2014; \$710 per month for the months of January through April of 2014; \$511 per month for the months of January through October of 2013; \$614 per month the months of November and December of 2013; and \$410 per month for the months of September through December of 2012.
3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for B.

All other provisions of the Administrative Review Decision and the Amended Administrative Child and Medical Support Order dated April 11, 2014 remain in effect.

DATED this 19th day of December, 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 8th day of January, 2015

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

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