

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

IN THE MATTER OF	)	
	)	
O T. J	)	OAH No. 14-1120-CSS
_____	)	CSSD No. 00119701

**DECISION AND ORDER**

**I. Introduction**

On July 28, 2014, a hearing was held to consider the child support obligation of O T. J for her child, G. Ms. J did not participate. H A. J, the custodial parent, also did not participate in the hearing.<sup>1</sup> The Division was represented by James W. Pendergraft, Child Support Services Specialist. The hearing was audio-recorded. The record closed on August 8, 2014.

This case is Ms. J’s appeal of the Division’s order establishing her child support obligation for G. The Division’s order is upheld because Ms. J did not meet her burden of proof to show that this order was incorrect.<sup>2</sup>

**II. Facts**

In December of 2013, Mr. J applied for public assistance for G.<sup>3</sup> The Division served Ms. J, G’s mother, with an Administrative Child and Medical Support Order on April 3, 2014.<sup>4</sup> Ms. J asked for an administrative review of her child support order. Ms. J provided her federal income tax return for 2013 and explained that she has no income and is unemployed.<sup>5</sup> Ms. J only reported \$1,564 in gross income on that return.<sup>6</sup>

The Division issued an Administrative Review Decision affirming the Administrative Child and Medical Support Order on March 7, 2014.<sup>7</sup> The Division set Ms. J’s monthly ongoing child support for G at \$266. The order also established arrears back to December of 2013. This order set Ms. J’s 2013 arrears at the monthly amount of \$203 per month. The 2014

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<sup>1</sup> Mr. and Ms. J did not appear or provide a phone number as directed by the notices sent to them at their addresses of record. Mr. and Ms. J did not answer their phone numbers of record at the time set for the hearing. Voice mail messages were left at their phone numbers of record. The record was held open for ten days so that the parties could file a request to reschedule the hearing. No request was filed.

<sup>2</sup> This decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a decision if “a person requests a hearing and fails to appear at the hearing.”

<sup>3</sup> Division’s Pre Hearing Brief, page 1 & Exhibit 1, page 8.

<sup>4</sup> Division’s Pre Hearing Brief, page 1 & Exhibit 1.

<sup>5</sup> Exhibit 3, page 7.

<sup>6</sup> Exhibit 3, page 3.

<sup>7</sup> Exhibit 4.

and ongoing monthly amount of \$266 was based on full-time earnings of \$8.32 per hour plus a Permanent Fund Dividend.<sup>8</sup>

Ms. J requested a formal hearing. In that request, Ms. J again explained that she is unemployed and cannot pay child support.<sup>9</sup>

Ms. J did not provide any information regarding her earning capacity or reasons for her employment status. There is no evidence that she is disabled. Ms. J did not participate in the hearing or file a request to have the hearing rescheduled.<sup>10</sup>

Based on the evidence in the record, I find that the Division's calculations at exhibit 1, pages 6 and 7 are correct and are based on the best available estimates of Ms. J's earning capacity during the relevant time frames.

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Ms. J, has the burden of proving by a preponderance of the evidence that the Division's orders are incorrect.<sup>11</sup> In her request for a formal hearing, Ms. J simply did not provide enough information to show that it is more likely than not that since December of 2013 she has not been earning, and cannot earn, an income equal to the wages imputed to her by the Division.<sup>12</sup> Ms. J did not provide persuasive evidence that the estimates of her earning capacity, which the Division used to set her child support, were incorrect.

Income can be imputed to an obligor in cases of unreasonable voluntary underemployment.<sup>13</sup> The custodial parent or relation should not be forced to finance the noncustodial parent's lifestyle choice if that choice is unreasonable given the duty to provide child support.<sup>14</sup> Similarly, when a parent with a child support obligation makes an accurate determination of his or her income impossible, income must be imputed to calculate the child support obligation. The criteria used to estimate the proper amount of income to impute are the same as those used in a case where the noncustodial parent is voluntarily and unreasonably unemployed or underemployed. Rather than determining the parent's actual income, the

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<sup>8</sup> Exhibit 4.

<sup>9</sup> Exhibit 5.

<sup>10</sup> Exhibit 5 & Recording of Hearing.

<sup>11</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>12</sup> Exhibit 6.

<sup>13</sup> Alaska Civil Rule 90.3(a)(4).

<sup>14</sup> See *Olmstead v. Ziegler*, 42 P3d 1102 (Alaska 1987).

parent's earning capacity is used to estimate the parent's potential income.<sup>15</sup>

In this case, the Division imputed income to Ms. J based on its determination that she was either voluntarily or unreasonably underemployed or under-reporting her income. At the hearing, the Division noted that there was some indication that Ms. J was commercial fishing, and that income from that activity would not necessarily be reported to the Department of Labor. There was no indication in the record that Ms. J was unable to work and no explanation of how she was living on the income that she reported. The Division based her child support on a low hourly wage from her earnings history. Even if Ms. J's PFD is garnished, it was still properly included as income for the purposes of calculating her child support obligation.<sup>16</sup>

If she is not earning a cash income at least equal to the wage in the Division's calculations plus a PFD, Ms. J has not shown that the Division's determination that she is unreasonably underemployed was incorrect. Ms. J has a child support obligation. Ms. J's child needs her to make her best efforts to provide her share of his support.

#### **IV. Conclusion**

Without Ms. J having shown that the Division's order is incorrect, it should be affirmed.<sup>17</sup> This child support amount was calculated using the primary custody formula in Civil Rule 90.3(a).

#### **V. Child Support Order**

The Division's Administrative Review Decision affirming the Administrative Child and Medical Support Order that was issued on March 7, 2014 is affirmed.

DATED this 12<sup>th</sup> day of August, 2014.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>15</sup> *Laybourn v. Powell*, 55 P.3d 745, 747 (Alaska 2002).

<sup>16</sup> Alaska Civil Rule 90.3(a)(1).

<sup>17</sup> Alaska Regulation 15 AAC 05.030(h).

**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 3<sup>rd</sup> day of September, 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.]