

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

In the Matter of)	
)	
K W. T)	OAH No. 16-0485-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 001106815

DECISION AND ORDER

I. Introduction

Z N appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division establishing K T' total child support obligation for the child A at \$24,510. Ms. N contests the income and support for prior children figures used by the division in calculating Mr. T' support obligation. Based on the evidence presented in the course of the hearing process, Mr. T' total child support obligation for the child A should be set at \$32,940.

II. Facts

This is the second time the division has established Mr. T' child support obligation. A was born in Anchorage in 2000. The division received an application for child support services for A from Ms. N in May 2001.¹ A was adopted by Ms. N' husband in March, 2006, ending Mr. T' ongoing child support obligation.²

Mr. T was served with a complaint for establishment of paternity in July of 2001. In 2002 the division issued an administrative child support and medical support order, ordering Mr. T' to pay \$634 a month in child support.³ The process server who was to serve the order on Mr. T instead gave the papers to T D.⁴

The current action came about because Mr. T inquired about whether the 2002 child support order was properly served. The attorney general found that it was not, and advised the division to recalculate the support order and serve the new order on Mr. T personally.⁵ The division issued its second Administrative Child Support and Medical Support Order in January,

¹ Division Exhibit 9 at 2.
² Division Exhibit 3 at 1.
³ Division Exhibit 2 at 1.
⁴ Division Exhibit 2 at 10.
⁵ Division Exhibit 9 at 1 - 2.

2016, finding that Mr. T owed total child support arrears of \$24,441 due on February 1, 2016.⁶ This figure represents the total amount the division calculated that Mr. T was required to pay in child support for A from May 2001 through March 2006; it does not reflect any credits for payments actually made.⁷

Ms. N requested an administrative review of the second child support order.⁸ Following the review, on March 29, 2016, the division issued an amended order setting the total amount due at \$24,510.⁹ Ms. N appealed the amended order, and the appeal was referred to the Office of Administrative Hearings.¹⁰ Ms. N questioned the accuracy of the division's calculations, particularly the figures used for Mr. T' military pay and benefits and his support obligation for prior children.

Mr. T served in the Army.¹¹ Mr. T was on active duty from 1999 through 2003.¹² Effective January 4, 2004, the Department of Veterans Affairs found that he had a total and permanent service-connected disability.¹³ He began receiving disability payments in 2005.¹⁴ Mr. T had court-ordered support obligations for three children older than A, two under an Iowa order, and one under a Maryland order.¹⁵

A telephonic hearing was held on May 18, 2016, before Administrative Law Judge Mark Handley. Mr. T represented himself. Ms. N represented herself. Joseph West and Brandi Estes, Child Support Specialists, represented the division. The record was held open for additional information and a continuation of the hearing was scheduled for June 17, 2016. The matter was reassigned to Administrative Law Judge Kathryn L. Kurtz, who presided at the June 17, 2016 hearing. At the June 17, 2016 hearing, Mr. T and Ms. N again represented themselves. Brandi Estes represented the division. The record was held open until July 8, 2016, at the request of Mr. T for Mr. T to submit further information relating to his support obligation for children from prior relationships and for the other parties to respond. The record was reopened by

⁶ Division Exhibit 5 at 2.

⁷ Division Exhibit 5 at 8 - 9.

⁸ Division Exhibit 7 at 1.

⁹ Division Exhibit 9 at 4, 12.

¹⁰ Division Exhibit 11 at 1.

¹¹ Division Exhibit 8, Exhibit 12.

¹² Division Exhibit 8 at 1.

¹³ Division Exhibit 8 at 2 - 3.

¹⁴ Division Exhibit 9 at 3; Testimony of T.

¹⁵ Division Exhibits 4 and 13.

Administrative Law Judge Kurtz for revised calculations from the division. The record closed on August 3, 2016.

III. Discussion

Ms. N appeals the Amended Administrative Child and Medical Support Order issued by the division on March 29, 2016.¹⁶ Specifically, she challenges the figures for Mr. T' income and support obligation for children from prior relationships in calculating his total support obligation for A. At issue is the total amount of Mr. T' past-due child support obligation, set at \$24,510 in the amended order. Following the hearing, the division recalculated Mr. T' support obligation based on new information from Mr. T on his actual earnings, and again based on actual child support paid for prior children.

A. Mr. T' child support obligation

Under the system used by the Alaska courts and by the division, a parent's child support obligation is a percentage of that parent's total income less mandatory deductions that include taxes and support for children from prior relationships.¹⁷ The amount of Mr. T' income and deduction for children from prior relationships were both subject to dispute in this case. The information the division had when it calculated the arrears figure in the March 29, 2016 order was incomplete. The division has now recalculated the arrears based on additional information received during the hearing process.

Mr. T was in the military when A was born in 2000. He separated from the service in December 2003.¹⁸ Effective January, 2004 the Department of Veterans Affairs determined that Mr. T was a 100 percent service connected unemployable total and permanent disabled veteran.¹⁹ In response to Ms. N' appeal, the division obtained information on Mr. T' actual military active duty compensation for 2001 through 2004, and his actual disability compensation from 2004 through 2006.²⁰ Based on this new information, the division recalculated Mr. T' total support

¹⁶ Division Exhibit 9 at 4.

¹⁷ Civil Rule 90.3(a).

¹⁸ Division Exhibit 8 at 1.

¹⁹ Divisions Exhibit 8 at 2.

²⁰ Division Submission to Record dated June 9, 2016; Division Exhibit 12 (Mr. T' Leave and Earnings Statements, or LESs); Division Exhibit 8 at 6.

arrears for May 2001, when Ms. N applied for service, through March 2006, when A was adopted.²¹

Both parents then contested the figure used by the division for Mr. T' deduction for support for children from prior relationships used in this recalculation. The division initially used a figure of \$550 based on a Maryland support order for the entire period from 2001 through 2006 for which Mr. T' owed support for A.²² However, the last month during which child support was paid under the Maryland order was August, 2004, the month his child support obligation under that order ended. Also, throughout the period for which he owed child support for A, Mr. T owed child support for two prior children under an Iowa order. Those Iowa child support orders totaled \$315 through 2005. In 2006, the Iowa support obligation was reduced to \$75 a month.²³

The division recalculated Mr. T' total arrears again, this time using a deduction for child support for prior children based on an average of Mr. T' actual support payments for his three older children.²⁴ Following this adjustment, Mr. T' arrears totaled \$32,940.²⁵

B. Other issues

The parents raised a number of other issues in the course of this proceeding that are beyond the scope of this appeal.

1. Paternity

This decision will not address the paternity of A; that issue was decided in an earlier proceeding and not in the order being appealed in this case. During the hearing, Mr. T repeatedly denied that he is A's father. However, he also made clear that he was not willing to submit to genetic testing. Genetic testing would be required to disestablish paternity under AS 25.27.166. In addition, there are time limits for filing a petition to disestablish paternity. On the second hearing day, Ms. Estes explained that "in accordance with the Soldiers and Sailors Relief Act, Mr. T was provided with a counsel representative, and through a court process Mr. T was defaulted as the father on this case. Paternity was

²¹ The division's Amended Administrative Child and Medical Support Order, dated March 29, 2016, contains a typographical error on page 2 (Exhibit 9 at 5). It states that the arrears are for the period "March 1, 2001 to March 31, 2006." The obligation began on May 1, 2001, not March 1, 2001. The dates are shown correctly on Exhibit 16.

²² Division Exhibit 5 at 10 - 15.

²³ Division Exhibit 13 at 21.

²⁴ Division Exhibit 15.

²⁵ Division Exhibit 16 at 2.

established in that method, and in order to address paternity, he would have to go back to court to address that matter."

2. Service of Original Order

The decision will not address whether Mr. T was properly served with the 2002 order. The agency has effectively conceded that he was not. Ms. N has not taken issue with division's approach of addressing faulty service by issuing and serving a new order. Mr. T did not appeal the new order. The parties have acquiesced in the approach taken by the division. Because the parties have acquiesced in the approach taken by the division, this decision will not consider the propriety of the division's decision to issue a new order to address the defect in service of the first order.

3. Interest

Finally, the decision will not address the calculation of interest on the newly established amount of arrears. The division has argued that the calculation of interest on the arrears is an enforcement issue. In her request for an appeal, Ms. N wrote that she was requesting another review of the case "for proper calculations and interest accrued for arrears not paid calculated for the year(s) that weren't paid. . . . That would include an accumulated interest accrued for the entire year of 2005 & years prior when no payment was received."²⁶ However, interest is not addressed in the division's Amended Administrative Child and Medical Support, except for the statement that "[i]nterest will accrue based on the arrears balance for the current order. (AS 25.27.025, 15 AAC 125.840)."²⁷ Under 15 AAC 125.840(a), the agency will charge the obligor interest on unpaid child support "commencing on the last day of the first month following the date on which the child support payment became due." The division has not yet had the opportunity to calculate interest on the balance under the current order as adjusted in this decision.

IV. Conclusion

Based on Mr. T' actual compensation and child support payments for other children during the period for which he owed child support for A, his total child support arrears are \$32,940, less payments made under the 2002 order.

²⁶ Division Exhibit 11 at 1.

²⁷ Division Exhibit 9 at 6.

The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. T owes an accrued debt for past due child support in the amount of \$32,940 for the period May 1, 2001 to March 31, 2006, less payments made under the November 18, 2002 order.

2. All other provisions of the division’s Amended Administrative Child and Medical Support Order issued on March 29, 2016, remain in effect.

Dated: August 5, 2016.

Signed _____
Kathryn L. Kurtz
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 within 30 days after the date of this decision.

DATED this 22nd day of August, 2016.

By: *Signed* _____
Signature
Kathryn Kurtz _____
Name
Administrative Law Judge _____
Title

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