

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

In the Matter of )  
                  J L. B )           OAH No. 05-0670-CSS  
\_\_\_\_\_ )           CSSD No. 001129957

**CHILD SUPPORT DECISION AND ORDER**

**I. Introduction**

J L. B filed a request for formal hearing with the Child Support Services Division on August 5, 2005, asking that the division return money collected for support in excess of the public assistance benefits her children received. On August 31, 2005, the division filed a Motion for Dismissal indicating that a review of the file revealed that Ms. B is entitled to a refund in the amount of \$1,815.40 and asking that the appeal be dismissed because no other issues are in dispute. Telephonic hearings were held on September 22 and October 24, 2005. Ms. B participated in both hearings. C S, the custodian, participated only in the October 24<sup>th</sup> hearing. Andrew Rawls represented the division at both hearings.

**II. Facts**

During the September 22<sup>nd</sup> hearing, Ms. B said that she had received a \$1,815.40 refund check, but she disputed whether that amount, together with other refund checks previously received, covered the entire amount the division collected above and beyond the benefits received by the children. Mr. Rawls reiterated the division’s position that Ms. B is not entitled to an administrative appeal of a collection matter such as this but suggested that the division could perform an audit. Ms. B agreed that an audit would be useful but also indicated that she may wish to challenge the amount of the support payment set in the establishment order. The record was held open to allow the division to conduct the audit, to see if this would resolve Ms. B’s concerns, and to allow Ms. B to request a waiver of the deadline for filing an appeal of the establishment order.

To request a waiver, Ms. B was required to file a written statement explaining in detail why she could not file on time. She filed nothing.

At the continuation of the hearing on October 24<sup>th</sup> Ms. B was not able to provide support for a waiver of the deadline but did essentially make an argument that her hearing request indirectly challenged the basis for the support amount. For that reason alone, the record was held open to allow Ms. B one final “opportunity to be heard on the issue of whether the support

obligation was set too high ....”<sup>1</sup> To secure that opportunity Ms. B needed to submit her arguments in writing, together with any documents she wanted to be considered and a sworn affidavit if she relied on facts from personal knowledge not in existing documents, and she needed to do that by November 21, 2005.<sup>2</sup> The division and Mr. S were then to have until December 5, 2005 to respond.

Again, Ms. B filed nothing. She filed nothing by the November 21<sup>st</sup> deadline and nothing in response to a December 1, 2005 document (titled “Motion for Decision”) the division filed indicating that it has received nothing from Ms. B by the November 21<sup>st</sup> deadline.<sup>3</sup>

### **III. Discussion**

If a child support obligor believes that the division has collected too much support, the obligor may ask the division for an administrative review.<sup>4</sup> A child support obligor can appeal (request a formal hearing) on a variety of decisions but not on a collection issue such as Ms. B initially raised.<sup>5</sup> It would have been appropriate, therefore, to grant the division’s August 31, 2005 Motion for Dismissal if not for the finding that her hearing request indirectly challenges the basis for the support amount.

A child support obligor has the right to a formal hearing on an order establishing the amount of support.<sup>6</sup> The obligor who requests a hearing, however, must participate in a meaningful way or risk that the order establishing the support amount will be upheld.<sup>7</sup> In this case, Ms. B failed to participate in a meaningful way because she failed to provide any evidence supporting her general contention that the support amount was set too high.

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<sup>1</sup> See November 2, 2005 Interim Order Allowing Submittals to the Record at p. 2.

<sup>2</sup> See November 2, 2005 Interim Order Allowing Submittals to the Record at p. 2.

<sup>3</sup> The division should not have filed a document styled “Motion for Decision” because the filing of a motion requires that the record be held open to allow the other parties a reasonable period to respond to the motion. The better course would have been for the division to file a notice indicating that it had received nothing from Ms. B by the interim order’s deadline. More than 30 days have now passed since the division filed its “Motion for Decision” and neither Ms. B nor Mr. S filed anything at all by way of response to it.

<sup>4</sup> See 15 AAC 125.510(b).

<sup>5</sup> See 15 AAC 05.010(a) (excepting administrative reviews under 15 AAC 125.510 from the categories for which a formal hearing opportunity is provided).

<sup>6</sup> See 15 AAC 05.010(a) (providing for initiation of administrative appeals by filing a hearing request under statutory provisions that include establishment of support orders).

<sup>7</sup> See, e.g., AS 25.27.170(f) (providing for support to be established in the amount of the notice of financial responsibility if the obligor asked for a hearing but failed to appear for it).

**IV. Conclusion**

For the reasons above, Ms. B’s appeal is dismissed.

DATED this 24<sup>th</sup> day of January, 2006.

By: Signed  
Terry L. Thurbon  
Chief 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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 7<sup>th</sup> day of February, 2006.

By: Signed  
Signature  
Terry L. Thurbon  
Name  
Chief Administrative Law Judge  
Title

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