

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

IN THE MATTER OF	)	OAH No. 06-0752-CSS
B L. A	)	CSSD No. 00114286
	)	
_____	)	

**DECISION AND ORDER**

**I. Introduction**

On February 27, 2006, a formal hearing was held to consider the child support obligation of B L. A (Obligor) for the support of his child, X (Obligee).<sup>1</sup> Mr. A participated in the hearing. The custodial parent, E S, also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on December 15, 2006.

This case is Mr. A's appeal of the Division's order establishing his monthly child support obligation for his child, X. Having reviewed the record in this case and after due deliberation, I concluded that Mr. A's child support for 2006 should be set at the monthly amount in the Division's latest calculations for 2006, which is based on his estimated income less deductions for supporting his older child. These calculations result in a monthly child support amount of \$176. For 2007 and ongoing, the Division's latest calculations, based on Mr. A's estimated earnings with his new job, should be corrected to include a \$0.50 per hour deduction for union dues. This correction results in a monthly support amount of \$508.

**II. Facts**

Ms. S requested child support services for her child, X, through the State of Montana in January of 2006.<sup>2</sup> Paternity is not in dispute.<sup>3</sup> Mr. A is named as X's father in an administrative paternity order.<sup>4</sup>

The Division served Mr. A with an Administrative Child and Medical Support Order on August 16, 2006.<sup>5</sup> Mr. A requested an administrative review of that order.<sup>6</sup>

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170.

<sup>2</sup> Ex. 13.

<sup>3</sup> Division's Pre Hearing Brief.

<sup>4</sup> Division's Pre Hearing Brief.

<sup>5</sup> Ex. 5.

<sup>6</sup> Ex. 6.

The Division issued an Amended Administrative Child and Medical Support Order on October 9, 2006.<sup>7</sup> The Division set Mr. A's ongoing child support for X at \$204 per month. The order also established arrears beginning in May of 2006. Mr. A requested a formal hearing.

At the hearing, Mr. A explained that he was supporting three other children, his step child and his new-born child who will be living with him in his home, and his older daughter who lives next door, for whom he pays \$150 in child support.<sup>8</sup> The mother of his youngest child has medical problems and has recently been unable to work.<sup>9</sup>

After the hearing, the Division provided documentation showing that Ms. S had applied for child support services in January of 2006.<sup>10</sup> After the hearing, the Division also submitted new calculations.<sup>11</sup> These calculations are based on Mr. A's estimated 2006 income and his child support payments for his older child based on his testimony at the hearing.<sup>12</sup> The Division's latest calculations result in monthly child support amounts of \$174 for 2006, and \$526 for 2007 and ongoing.<sup>13</sup> Based on the evidence in the record, I conclude that it is more likely than not that the Division's latest calculations for 2006 and the information used in those calculations are correct.<sup>14</sup> The Division's latest calculations, based on Mr. A's earnings with his new job, however, did not include any deduction for union dues.<sup>15</sup> These dues are \$0.50 for every hour of wages.<sup>16</sup> This correction results in a monthly support amount of \$508.<sup>17</sup>

Mr. A presented clear and convincing evidence that in order to prevent manifest injustice, he should receive a \$150 deduction from the income for calculating his child support for X for the support he pays for his older daughter, S.<sup>18</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Mr. A, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>19</sup>

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<sup>7</sup> Ex. 8.

<sup>8</sup> Recording of Hearing.

<sup>9</sup> Recording of Hearing.

<sup>10</sup> Ex. 13, page 4.

<sup>11</sup> Ex. 12.

<sup>12</sup> Recording of Hearing & Ex. 12.

<sup>13</sup> Recording of Hearing & Ex. 12.

<sup>14</sup> Recording of Hearing & Ex. 12, page 1.

<sup>15</sup> Recording of Hearing & Ex. 12 page 2.

<sup>16</sup> Recording of Hearing & Ex. 11 page 2.

<sup>17</sup> Ex. A.

<sup>18</sup> Recording of Hearing.

<sup>19</sup> Alaska Regulation 15 AAC 05.030(h) & Ex. 13, page 4.

Mr. A was concerned about getting the proper deduction for supporting his older child. At the hearing, Mr. A explained that he would be starting a new job with the no name School District soon. Mr. A also explained that he would be supporting three other children.<sup>20</sup>

When establishing pre-order arrears in a case where there was no public assistance, the Division goes back only to the month that the request for child support services was filed. In this case, that month is January 2006.<sup>21</sup>

There is no administrative or court order requiring Mr. A to pay child support for his older daughter, S, but there is no dispute that he pays her mother \$150 per month under an informal arrangement that includes frequent visitation. Generally, an obligor parent is not entitled to a deduction for paying child support for an older child unless the parent has a child support order for the older child.<sup>22</sup> However, because there is no dispute that Mr. A has a history of paying this support as well as supporting his older child through frequent visitation it would clearly be unjust not to give him this deduction.<sup>23</sup> It will not work an injustice however, to require Mr. A to pay ongoing monthly support amount of \$508 for X.<sup>24</sup> With his new job, Mr. A should be able to pay this amount of support for X and still meet his other financial obligations.<sup>25</sup>

#### **IV. Conclusion**

Mr. A's child support should be set based on his estimated income with deduction for supporting his older child in accordance with the Division's latest calculations.

#### **CHILD SUPPORT ORDER**

1. Mr. A owes ongoing child support for X in the monthly amount of \$508, effective March 1, 2007.
2. Mr. A is liable for child support arrears for X in the monthly amount of \$174 for the months of January through December of 2006, and the months of January through February of 2007.

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<sup>20</sup> Recording of Hearing & Ex.8.

<sup>21</sup> Alaska Regulation 15 AAC 125.105(a).

<sup>22</sup> Alaska Civil Rule 90.3, Commentary D.

<sup>23</sup> Alaska Civil Rule 90.3(c) & Commentary D.

<sup>24</sup> Ex. A & 11.

<sup>25</sup> Ex. 11.

3. The Division shall give parties the appropriate credit or debit for any out-of-pocket expenses for providing health insurance coverage for X.

DATED this 26<sup>th</sup> day of February, 2007.

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 Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 22<sup>nd</sup> day of March, 2007.

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

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