

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

IN THE MATTER OF	)	OAH No. 06-0870-CSS
J. P. D.	)	CSSD No. 001138827
	)	
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**DECISION AND ORDER**

**I. Introduction**

On January 17, 2007, a formal hearing was held to consider the child support obligation of J. P. D. (Obligor) for the support of his children, D. and R. (Obligees).<sup>1</sup> Mr. D. was represented by his attorney, R. M. Beconovich. The children’s mother, J. R. S., participated. David Peltier, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing.

This case is Mr. D.’s appeal of the Division’s administrative order establishing his child support obligation for D. and R. Having reviewed the record in this case and after due deliberation, I concluded that the monthly child support amounts established in the Division’s Amended Administrative Child and Medical Support Order should be adjusted to reflect that Mr. D. is liable only for child support arrears under the administrative order for the month of September of 2005. The child support for this month should be set at \$1,317. He should receive a total credit of \$800 for his direct payments of child support to Ms. S. during that month.

**II. Facts**

Ms. S. applied for the Division’s services for the children, D. and R., on September 7, 2005. Paternity is not in dispute. Mr. D. is named as D. and R.’s father on their birth certificates. The Division served Mr. D. with an Administrative Child and Medical Support Order on November 30, 2005. Mr. D. requested an administrative review.

The Division issued an Amended Administrative Child and Medical Support Order on November 27, 2006. Mr. D. requested a formal hearing.

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

At the hearing, the participating parties agreed that for all the months after September of 2005, other child support orders cover the parties' child support obligations. The parties also agreed that Mr. D. should receive a total credit of \$800 for his direct payments for that month.<sup>2</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case Mr. D., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>3</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 the Division's services was filed. In this case, that month is September 2005.<sup>4</sup>

There is no dispute that income that the Division used to calculate that Mr. D.'s 2005 monthly arrears at \$1,317 was correct.<sup>5</sup> The parties also agreed that Mr. D. had custody of the children beginning in October of 2006.<sup>6</sup> Mr. D. does not have a duty to pay child support arrears for months when he was a custodial parent.<sup>7</sup>

Other child support arrears and ongoing child support are now covered by Alaska court orders.<sup>8</sup> The parties also testified that Mr. D. made \$800 in direct payments of child support to Ms. S. during the month of September 2005.<sup>9</sup>

Credits for direct payments of child support are allowed even after an obligor has been notified that he should pay through the Division, as long as the payments are not for a period when the children were receiving public assistance and the obligor provides clear and convincing evidence that the payments were made.<sup>10</sup> In this case the payments were made before the Division served Mr. D. with the Administrative Child and Medical Support Order, and there is no dispute that the payments were made.

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<sup>2</sup> Recording of Hearing.

<sup>3</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>4</sup> Alaska Regulation 15 AAC 125.105(a).

<sup>5</sup> Recording of Hearing & Ex.10, page 1.

<sup>6</sup> Recording of Hearing.

<sup>7</sup> Alaska Civil Rule 90.3(a) & AS 25.27.120(a); -.130(a)(2).

<sup>8</sup> Ex.6, 8 & 11.

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

<sup>10</sup> Alaska Regulation 15AAC 125.465.

**IV. Conclusion**

Under this administrative child support order, Mr. D. is liable only for arrears for September 2005, which should be set at \$1,317 per month. Mr. D. should receive an \$800 credit for direct payments of child support.

**CHILD SUPPORT ORDER**

1. Ongoing child support for D. and R. and arrears after September 2005 are set by other orders.
2. Mr. D. is liable for child support arrears for D. and R. under this order in the monthly amount of \$1,317 only for the month of September 2005.
3. The Division shall give Mr. D. a total credit for direct payments of child support of \$800 for the month of September 2005.

DATED this 18<sup>th</sup> day of January, 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 1<sup>st</sup> day of February, 2007.

By: Signed \_\_\_\_\_  
Mark T. Handley  
Administrative Law Judge

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