

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

IN THE MATTER OF)	OAH No. 07-0202-CSS
C T. E)	CSSD No. 001138651
)	
_____)	

DECISION AND ORDER ON REMAND

I. Introduction

On May 2, 2007, a formal hearing was held to consider the child support obligation of C T. E (Obligor) for the support of his child, J (Obligee).¹ Mr. E participated in the hearing. The custodial parent, H A. K, also participated. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed at the end of the hearing. After the hearing, a proposed order was issued. The Division and Mr. E filed proposed actions and the case was remanded to take additional evidence regarding Mr. E' direct payments of child support. On June 26, 2007, a second hearing was held. The record closed again at the end of that hearing.

This case is Mr. E' appeal of the Division's order establishing his monthly child support obligation for his child, J. I concluded that Mr. E' arrears and ongoing child support for 2005, 2006 and 2007 should be set at the monthly amount in the Division's latest calculations, which make adjustments for the fact that Mr. E lived in base housing. These calculations result in a monthly child support amount of \$474 for 2005 and \$452 for 2006 and ongoing. At the hearing, parties agreed that this is the correct result.

I have also determined that from the first month that arrears began to accrue under this order, August 1, 2005, through the month that Mr. E was served with the notice that he needed to make future payments through the Division, January of 2007, Mr. E made direct payments of child support to Ms. K that are in excess of his child support obligation. Mr. E' arrears for this period, however, cannot be reduced below zero.

II. Facts

Ms. K requested public assistance medical in August of 2005 for her child, J, beginning

¹ The hearing was held under Alaska Statute 25.27.170.

in April of 2006.² Paternity is not in dispute.³ Mr. E is named as J's father on her birth certificate.⁴

The Division served Mr. E with an Administrative Child and Medical Support Order on January 1, 2007.⁵ Mr. E requested an administrative review of that order.⁶

The Division issued an Amended Administrative Child and Medical Support Order on March 20, 2007.⁷ The Division set Mr. E's ongoing child support for J at \$645 per month. The order also established arrears beginning in August of 2005. Mr. E requested a formal hearing.

Prior to the hearing, Mr. E provided information regarding automobile insurance for the car he loaned to Ms. K while he was in Iraq.⁸ The Division provided new calculations based on this information and determined that Mr. E's monthly child support for monthly child support amount of \$474 for 2005 and \$452 for 2006 and ongoing.⁹ The Division's new calculations are based on Mr. E's 2005 and 2006 income.¹⁰ At the hearing, the parties agreed that the Division's latest calculations are correct.¹¹

Based on the evidence in the record, I conclude that it is more likely than not that the Division's latest calculations for 2005, 2006 and ongoing and the information used in these calculations are correct.¹²

Based on the evidence in the record, I also conclude that it is more likely than not that from the first month that arrears began to accrue under this order, August 1, 2005, through the month that Mr. E was served with the notice that he needed to make future payments through the Division, January of 2007, Mr. E made direct payments of child support to Ms. K that are in excess of his child support due under the Division's latest calculations for that period.¹³

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. E, has the

² Ex. 11, page 4.

³ Division's Pre Hearing Brief & Recording of Hearing.

⁴ Division's Pre Hearing Brief.

⁵ Ex. 3.

⁶ Ex. 4.

⁷ Ex. 10.

⁸ Recording of Hearing.

⁹ Ex. 13.

¹⁰ Recording of Hearing & Ex. 13.

¹¹ Recording of Hearing.

¹² Recording of Hearing & Ex. 13.

¹³ Recording of Hearing & Ex. 7, pages 12 & 24.

burden of proving by a preponderance of the evidence that the Division's order is incorrect.¹⁴

There was no dispute at the hearing that the Division's latest calculations and the information used in these calculations are correct and that the Division's order should be adjusted.¹⁵

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 child was receiving cash grants of public assistance and the obligor provides clear and convincing evidence that the payments were made.¹⁶ Mr. E documented the payments that he claimed that made, but some of the money he paid was used by Ms. K to pay Mr. E' phone bill. Ms. K also recollected using some of these payments to make Mr. E' car payment, but Mr. E appeared to have a better recollection and documentation of his having made these car payments.¹⁷ Mr. E should receive credit for the money he paid to Ms. K for rent for herself and J. Direct payments intended to go toward rent for the custodial parent and the child can fairly be characterized as child support, but the same is not true for Mr. E' car insurance coverage. Those payments were not made directly to Ms. K, so she did not get to decide how the money was spent, and these payments protected Mr. E from liability and protected his investment in the car while it was on loan.¹⁸ Furthermore, any additional credits would make Mr. E' total credits exceed his child support liability for the period in which the payments were made.¹⁹ Mr. E' arrears for this period, however, cannot be reduced below zero.²⁰

There is a court order that is effective beginning in February of 2007. The order does not actually set an amount; rather it indicates that child support will be based on a shared custody calculation.²¹

IV. Conclusion

Mr. E' monthly child support for 2006, 2007 and ongoing should be set in accordance with the Division's latest calculations. Mr. E made direct payments of child support to Ms. K

¹⁴ Alaska Regulation 15 AAC 05.030(h).

¹⁵ Recording of Hearing & Ex. 13.

¹⁶ Alaska Regulation 15AAC 125.465.

¹⁷ Recording of Hearing & Ex. 7, page 12 & 24.

¹⁸ See *Ogard v. Ogard*, 808 P.2d 815, 817 (Alaska 1991)

¹⁹ Ex. 11.

²⁰ Alaska Regulation 15 AAC 125.105(d).

²¹ Ex. 9.

that were in excess of his child support obligation between August 2005 through January 2007. Mr. E' arrears for this period, however, cannot be reduced below zero.

V. CHILD SUPPORT ORDER

1. Mr. E' ongoing child support for J is set in the monthly amount of \$452, effective January 1, 2007.
2. Mr. E' child support arrears for J are set in the monthly amount of \$452 all the months of 2006 and \$474 per month for the months of August through December of 2005.
3. Mr. E is entitled to credit for direct payments and in-kind payments for the period of August 1, 2005 through January 31, 2007 equal to the amounts set for his monthly child support child support for that period.
4. The Division shall give parties the appropriate credit or debit for any out-of-pocket expenses for providing health insurance coverage for J.

DATED this 27th day of June, 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 18th day of July, 2007.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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