

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

IN THE MATTER OF )  
 )  
 L. L. ) Case No. OAH-07-0259-CSS  
 ) CSSD Case No. 001145064

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**DECISION & ORDER**

**I. Introduction**

The obligor, L. L., appeals an Amended Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on April 17, 2007. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on June 4, 2007. Ms. L. appeared by telephone. Andrew Rawls represented CSSD. The children are A. L. (DOB 00/00/04) and P. W. (00/00/05). The custodian is the State of Alaska. The administrative law judge issues a revised support order setting support at \$50 per month for two children.

**II. Facts**

In 2006, both of the children in this case lived with Ms. L. almost the entire year except for the month of August, when the children were in foster care. Around the end of December, 2006, the children went back into foster care, where they remained at the time of the hearing.

Ms. L. is 27 years old, and has a high school education. In 2006, Ms. L. had been working at “A” Foundation. Ms. L. was three weeks into a one-month mandatory training program when A. got sick with pinkeye and pneumonia, requiring him to be removed from daycare. Ms. L.’s fiancé was in Texas at this time. Unable to find alternative care for A., Ms. L. advised “A” Foundation that she needed to stay home for a period to care for her son. “A” Foundation advised Ms. L. that it would not keep her position open, but that she could reapply for the job in six months. Ms. L. has not reapplied at this time. Ms. L. now works part-time for “B” Inventory earning \$9 per hour, but the company assigns her very few hours per week. She estimates that so far in 2007 she has probably earned only about \$1,000.

According to the Department of Labor, in 2006 Ms. L. received about \$1,000 in wages. That year she also received a PFD, about \$2,800 in unemployment compensation, and \$700 in dividends from NANA Corporation. Ms. L. testified that in addition to what she earns, she relies on support from her fiancé and occasionally from family members.

Ms. L. has a history of several misdemeanors, including two DUI convictions, but no felonies. She has not been involved in any criminal cases for the last three or four years.

Currently, Ms. L. is in an outpatient treatment program that she entered under the direction of the Office of Children's Services (OCS). This is Ms. L.'s second attempt at treatment, her first program being in 2004 or 2005. Ms. L. testified that she is three weeks into the program, and that it has been going very well. At the time of the hearing, Ms. L. could not predict how long her individual program would last; apparently, the length of the treatment program varies depending on the progress of the participant.

### **III. Discussion**

Ms. L. raises two issues. She first argues that CSSD has incorrectly charged child support for the months of September through December, 2006, as she had the children in her own custody for all of 2006 except for August. Along with her own testimony, Ms. L. presented several affidavits in support of her assertion that she had the children most of the year except August. Ms. L.'s evidence was credible, and CSSD agreed with Ms. L. that it should not collect support for any month in 2006 except for August.

Ms. L. next argues that the amount of support CSSD has set for 2007 and ongoing is too high. For 2006, CSSD had set Ms. L.'s support amount at \$124 per month, based on total gross income of \$5,595.55. For 2007, CSSD has estimated that Ms. L. will earn gross income of \$23,126.96, based on hourly wages of \$10.25. CSSD set Ms. L.'s child support obligation accordingly at \$443 per month for two children. After Ms. L. testified and presented evidence at the hearing, CSSD agreed that its predicted income for Ms. L. was unrealistically high, and it did not argue that Ms. L. was voluntarily and unreasonably underemployed. CSSD took the position that Ms. L.'s earnings for 2007 will probably be similar to her 2006 earnings, and that support should therefore be set at the same amount of \$124 per month.

Generally, support for two children in primary custody should be set at 27 percent of the obligor's adjusted income.<sup>1</sup> This amount may be varied upon proof by clear and convincing evidence that, because of unusual circumstances, manifest injustice would result if the support award were not varied.<sup>2</sup>

Clear and convincing evidence shows that unusual circumstances exist in this case. The purpose of child support is, obviously, to provide support for the children who are entitled to it; when determining whether manifest injustice would result from a decision, possible injustice to the children who are the beneficiaries of a support order should be the first consideration.

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<sup>1</sup> Civil Rule 90.3(a).

<sup>2</sup> Civil Rule 90.3(c).

Because the children in this case are in the custody of the state and not another parent or relative, increasing the amount of support will carry no direct benefit for the children. On the contrary, draining the resources of their mother will ultimately have a negative impact on the children. Rather than reapportioning resources to where they will most benefit the children, increasing support in this case will merely deplete the overall resources available to a family with few resources to spare.

The evidence in the record does not indicate what is likely to happen in the case involving custody of the children and OCS. The fact that Ms. L. has entered treatment at the direction of OCS suggests a likelihood that there is some kind of plan for family reunification under consideration. Ms. L. is at the lower end of the income scale. Her ability to earn has been limited by her need to care for her very young children, and most likely by the problems with alcohol that she is now dealing with in treatment. Until Ms. L. addresses these problems, her employment prospects will probably continue to be somewhat limited, and the likelihood of a need for continuing public assistance is greater.

Under these circumstances, a threat to Ms. L.'s recovery and stability constitutes a threat both to the wellbeing of the children and to the public's financial interests. Increasing the amount of support will not benefit the children in any way, while decreasing the amount of support will also decrease the amount of financial stress on a family that is already at risk. While the public is entitled to recover from parents some of the costs expended for children, the difference in the amount the state will receive in reimbursement between a \$50 minimum order and an order of \$124 per month is relatively small. This amount may very well make a big difference to someone in Ms. L.'s situation.

Under the circumstances of this case, it would be manifestly unjust to these children to charge their mother more than the minimum level of support when she is trying to get into a position of being better able to care for them. The public investment in care for the children would be best protected by supporting Ms. L. in her effort than by trying to wrest from her a few dollars of reimbursement for support of her children.

#### **IV. Conclusion**

This case presents clear and convincing evidence that, because of unusual circumstances, manifest injustice to the children would result if the amount of support were not varied from the Civil Rule 90.3(a) formula. Support should be set at \$50 per month for two children.

**V. Order**

IT IS HEREBY ORDERED that Ms. L.'s support obligation be set at \$50 per month for two children, effective August 1, 2006. Collection of support will be suspended for the months of September through December, 2006, and any other months in which Ms. L. has physical custody of the children.

DATED this 18<sup>th</sup> day of June, 2007.

By: Signed \_\_\_\_\_  
DALE WHITNEY  
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 5<sup>th</sup> day of July, 2007.

By: Signed  
DALE WHITNEY  
Administrative Law Judge

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