

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

IN THE MATTER OF:)
)
L. G. M.)
)
_____) OAH No. 07-0293-CSS
CSSD Case No. 001142677

DECISION AND ORDER

I. Introduction

This case concerns the obligation of L. G. M. for the support of L. G. M. (DOB 00/00/01) and L. R. U. (DOB 00/00/04). The custodian of record is B. U..

On February 12, 2007, the Child Support Services Division issued an amended administrative child support order establishing a support obligation of \$314 per month for two children effective March 1, 2007, with arrears in the amount of \$3,140 for the period from May 1, 2006, through February 28, 2007. Mr. M. filed an untimely appeal on May 9, 2007, and requested an administrative hearing.

The case was referred to the Office of Administrative Hearings. The division filed a motion to dismiss the appeal as untimely and the assigned administrative law judge conducted a telephonic hearing on June 12, 2007. Due to a technical problem, the hearing was not recorded and a supplemental telephonic hearing was conducted on July 24, 2007. Both Mr. M. and Ms. U. participated and provided testimony at the June hearing; Ms. U. was not available at her telephone number of record at the time of the July hearing. Andrew Rawls represented the division at both hearings.

The motion to dismiss was denied at the June hearing and the parties proceeded to hearing on the merits. Based on the testimony and the evidence in the record, arrears and ongoing support are set at the rate of \$177 per month.

II. Facts

L. M. has two children, the subject of this order. He has lived in Bethel since he was six. He is 43 years old and has an eighth grade education. Mr. M. has been sporadically employed as a laborer, truck driver, or in construction. He has a number of

physical ailments, including substantial hearing loss, but is not currently restricted from working.

In 2005, he was charged with several felonies and was released to the custody of a third party custodian. Because of the conditions of his release, he was unable to work. In 2006, the felony charges against him were dismissed, and his children L. and L. spent the majority of that year living with him.

Mr. M. has never earned any substantial income. Years ago, he fished commercially. When not employed, he has engaged in unsuccessful speculative ventures, such gold mining and home building. Most recently, he has worked as a dog handler and prospector, and has operated a pig farm. During 2006, his income was \$6,672.10.

III. Discussion

A. Motion to Dismiss

An administrative support order was served on Mr. M. on September 11, 2006.¹ On September 12, 2007, Mr. M. filed his request for administrative review pursuant to 15 AAC 125.118.² The review officer issued a decision on February 12, 2007, in conjunction with the amended administrative support order that is the subject of this hearing.³ Mr. M. filed his appeal on or about May 8, 2007, approximately 53 days late.⁴

A person who files an appeal within 30 days of the date of an order on administrative review is entitled to an administrative hearing.⁵ An untimely request for an administrative hearing will be granted when strict adherence to the filing deadline would work an injustice.⁶

Factors that may be considered in determining whether to grant an untimely request for an administrative hearing in a child support proceeding include the reasons for the delay, the extent of the delay, the degree of prejudice to the other parties, the strength

¹ Exhibit 3.

² Exhibit 4.

³ Exhibit 9.

⁴ Exhibit 11. Mr. M.'s letter of appeal is dated May 8, and is stamped as received on May 9. It is unclear if the letter was mailed or personally delivered. An appeal is filed on the date it is postmarked or personally delivered. See 15 AAC 05.010(c).

⁵ 15 AAC 125.118(f); 15 AAC 05.010(b)(6).

⁶ 15 AAC 05.030(k).

and nature of the asserted grounds for the appeal, whether the agency's determination was previously contested, and any other relevant circumstances.⁷

In this case, the delay was less than 60 days, and Ms. U. did not object to consideration of the appeal and Mr. M.'s appeal raises factual issues relevant to the determination of support obligation that should be resolved before a final order is issued. To avoid injustice, under the circumstances of this case the untimely appeal is accepted.

B. Child Support

For two children, a parent's presumptive support obligation is 27% of that parent's adjusted annual income,⁸ that is, income after allowable deductions.⁹ Where the parent is voluntarily unemployed or underemployed, the parent's presumptive support obligation is based upon potential income.¹⁰ Potential income is based upon a person's past income, skills, work history and education, and the job opportunities in the area where the parent physically resides.¹¹

The preponderance of the evidence is that Mr. M. is voluntarily unemployed. However, Mr. M. has never held a job for any significant period of time. He has only an eighth grade education and his only apparent marketable skill is as a laborer. These facts, plus his physical condition, limit his employability, particularly in a smaller town, such as Bethel, where jobs are less diverse and abundant than in a larger community.

It is reasonable to expect that even entry-level, minimum wage jobs will often require a high school education or equivalent, and that an individual with Mr. M.'s prior work history will find it more difficult than others to find and hold regular employment. In addition to these circumstances, Mr. M. has a felony arrest history that may be expected to limit his job opportunities, even though he does not have a conviction. For these reasons, income should be imputed to Mr. M. at less than an amount equivalent to full-time work, reflecting the inherent difficulty in obtaining and holding a job for a person of limited education and skills, with minimal prior work experience history, a

⁷ See, e.g., In re Obligor, OAH No. 06-0610-CSS (CSSD No. 001123092), at 3 (October 30, 2006); In Re Obligor, OAH No. 05-0480-CSS (CSSD No. 001125701), Order for Hearing [and Denying Motion to Dismiss] (September 28, 2005).

⁸ 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

⁹ 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

¹⁰ 15 AAC 125.020(b). See Civil Rule 90.3(a)(4) (“voluntarily and unreasonably...unemployed or underemployed”) [emphasis added].

¹¹ 15 AAC 125.020(b). See Civil Rule 90.3(a)(4) (“work history, qualifications, and job opportunities”).

variety of physical ailments, and a criminal history including a felony arrest. In light of all of the circumstances, Mr. M.'s potential income is \$7,436, equivalent to half-time work at the minimum wage (\$7.15 x 1040) and roughly equivalent to his 2006 income.¹² At that rate, his presumptive modified ongoing support obligation for two children is \$177 per month, as shown on Appendix A.

IV. Conclusion

The child support obligation should be based on potential income.

ORDER

1. Mr. M. is liable for any arrears accrued from May 1, 2006, through August 31, 2007, at the rate of \$177 per month.
2. Mr. M.'s ongoing support obligation is \$177 per month effective September 1, 2007.

DATED: August 8, 2007

Signed

Terry L. Thurbon for
Andrew M. Hemenway
Administrative Law Judge

¹² Exhibit 11.

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 28th day of August, 2007.

By: Signed
Andrew M. Hemenway
Administrative Law Judge

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