

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

IN THE MATTER OF:)
)
L M. R) OAH No. 07-0567-CSS
) CSSD Case No. 001145005
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of L M. R for the support of C R (DOB 00/00/05). The custodian of record is P G.

On August 6, 2007, the Child Support Services Division issued an amended administrative child support order establishing a support obligation in the amount of \$384 per month effective September 1, 2007, with arrears in the amount of \$4,479 for the period from October 1, 2006, through August 31, 2007.¹

Mr. R filed an appeal and requested an administrative hearing. The assigned administrative law judge conducted a hearing on October 22, 2007. Andrew Rawls represented the division. Mr. R appeared in person and Ms. G participated telephonically.

Based on the testimony at the hearing and the evidence in the record, arrears are set at the rate of \$417 per month in 2006, and \$312 per month in 2007, and the ongoing child support obligation is set at the rate of \$424 per month.

II. Facts

L M. R work full time as a cook on a seasonal basis for the no name business. In that capacity, Mr. R earns a base wage of \$21.86 per hour, working seven days a week, twelve hours a day, on a two week on-two week off schedule. Mr. R can earn about \$10 per hour as a cook during the off season if he is able to find work; he typically supplements his income during the off season by working for no name's Pizza.

¹ Post Hearing Brief. The division initially represented that Mr. R's 2006 wages totaled \$49,962. Exhibit 7. Both figures were based upon information contained in the records of the Department of Labor and Workforce Development. However, the initial figure was an extrapolation from a single quarter, while the revised figure is based on the full year. Exhibit 2, page 4; Post Hearing Brief. The latter figure is therefore adopted.

In 2006, Mr. R was laid off from his position with no name business in September. His total wages in 2006 were \$42,325.² His total income in 2006, including wages, his Alaska Permanent Fund dividend, and unemployment benefits (\$142),³ was \$43,574.

Mr. R traveled to his parents' home in Mexico in the winter of 2006-07, where he worked on the family farm for no wages. He returned to work for no name business in April, 2007, and anticipated being laid off on November 13, 2007. His total wages for 2007 will be approximately \$29,948.⁴ With a layoff date of November 13, Mr. R would be eligible for unemployment insurance benefits totaling \$1,736 for the remainder of 2007.⁵ His reasonably anticipated total income in 2007, including wages, unemployment insurance benefits, and his Alaska Permanent Fund dividend, is \$33,338.

Mr. R's reasonably anticipated total income in 2008, including wages (\$36,136),⁶ unemployment insurance benefits (\$4,712),⁷ and his Alaska Permanent Fund dividend, is \$42,502.

Mr. R has one older child for whom he is liable for child support under a judicial support order in the amount of \$550 per month. Until April, 2006, the judicial support order (issued in 2002) was in the amount of \$775, for two children.

III. Discussion

The division establishes a child support obligation based upon "the expected actual annual income that the parent will earn or receive when the child support award is to be paid."⁸ When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.⁹

In this case, Mr. R's earnings through the date of the hearing are a matter of record, and there is evidence establishing his reasonably anticipated earnings for the

² Exhibit 2, page 1; R testimony.

³ Post Hearing Brief at 1.

⁴ Post Hearing Brief at 2 (\$2,033.03 [no name's Pizza] + \$27,914.59 [est. AMHS wages]).

⁵ The Department of Labor's online FAQ's for unemployment insurance indicate that a new claim may be filed as soon as the period of unemployment begins, that the benefit week begins each Sunday (including the layoff week), and that benefits are payable beginning the week after layoff.

⁶ Average of 2006 and 2007 wages, consisting of an average of \$1,945 in non-SBS wages, and an average of \$34,191 in SBS wages.

⁷ 19 weeks x \$248 per week.

⁸ 15 AAC 125.030(a).

⁹ Duffus v. Duffus, 72 P.3rd 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3rd 52, 56 (Alaska 2001).

remainder of 2007 and for 2008. Arrears for 2006 and 2007 are set at \$417 and \$312 per month, respectively, based on his actual income in 2006 and his actual and anticipated income for 2007, as determined above and shown on Appendices A and B.

For ongoing support beginning in January, 2008, Mr. R's support obligation is set at \$424 per month, based on his anticipated total income in 2008, as determined above and shown on Appendix C.

The division argues that arrears for 2006 and 2007 should include imputed income for unemployment insurance benefits that Mr. R could have received during his winter 2006-2007 layoff had he not instead visited his parents and worked for no wages on the family farm. However, as previously observed, arrears should generally be based on actual income. In this case Mr. R actually received only \$142 in unemployment compensation in 2006, and his anticipated unemployment compensation for the remainder of 2007 is \$1,736. While Mr. R could have received more if he had remained in Alaska during his layoff, he did not: arrears for 2006 and 2007 should be based on actual and anticipated unemployment compensation rather than amounts that he could have received but did not.

With respect to anticipated income in 2008, Mr. R testified that his wages were less in 2007 than in 2006 due to a reduction in overtime. Based on his 2002 support order (which reflects total income in excess of \$40,000) and his 2006 wages, Mr. R's anticipated wages in 2008 may reasonably be estimated based on the average of his earnings during the previous two years. As for anticipated income during the 2007-2008 winter layoff period, Mr. R's support obligation takes precedence over his personal preference to spend time with his family in Mexico, working for no wages. The evidence indicates that Mr. R will be eligible for unemployment compensation for nineteen weeks in 2008 if he remains in Alaska, for a total of \$4,712. While Mr. R could earn more than his unemployment benefit if he were able to find full time temporary work as a cook throughout his layoff period, the evidence does not establish that he can expect to do so, and in any case reasonable efforts to obtain employment are a condition of the continued receipt of unemployment benefits. For this reason, Mr. R's anticipated income for 2008 should be based on the unemployment benefits he is known to be eligible for during 2008, rather than on potential income that may or may not be earned.

Mr. R asked that the support order be adjusted to reflect his seasonal employment. Child support is based on annual income and it is the non-custodial parent's responsibility to budget to meet the monthly obligation. However, in cases where income is highly seasonal, the division may consider a seasonal variation in the monthly support obligation.¹⁰ A seasonal variation may be appropriate where it is appropriate to place the burden of budgeting to accommodate changes in income on the custodial parent.¹¹

In this case, given his support obligation for his older child, Mr. R's combined child support obligation during the off season is likely to be in excess of the 40% maximum for withholding allowed under law, and either one or both of his support orders would not be fully paid. For this reason, it is appropriate to place the burden of budgeting for periods of unequal income on the obligee, rather than the obligor. Ms. P did not object to seasonal variation of the amount paid. Adjusted for the seasonal variation in his income, Mr. R's annual support obligation would be met by making payments during the six high-income months of the year of \$624 and during low-income six months \$224, beginning in the high-income months. The ongoing support obligation should provide for seasonal variations, beginning with the higher-income months.

IV. Conclusion

Mr. R's child support obligation for the period of arrears should be based upon his actual income during the period of arrears, his ongoing support obligation should be based upon his reasonably anticipated income in 2008.

ORDER

1. L M. R liable for any arrears accrued from October 1-December 31, 2006, at the rate of \$417 per month, and from January 1-December 31, 2007, at the rate of \$312 per month.
2. L M. R's ongoing child support obligation is \$424 per month effective January 1, 2008, \$624 per month effective May 1 of each year beginning in 2008, and \$224 per month effective December 1 of each year beginning in 2008.

DATED: December 6, 2007.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

¹⁰ See, e.g., *In Re D*, OAH No. 05-0690-CSS (CSSD No. 001050912); 15 AAC 125.075.

¹¹ See Civil Rule 90.3(c)(5).

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

DATED this 27th day of December, 2007.

By: Signed
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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