

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

IN THE MATTER OF:)	
)	
C. G. R.)	OAH No. 08-0145-CSS
_____)	CSSD Case No. 001141319

DECISION AND ORDER

I. Introduction

This case concerns the obligation of C. G. R. for the support of J. R. (DOB 00/00/02). J. R. resides with his maternal grandparents, D. and P. H..

On March 4, 2008, the Child Support Services Division issued an amended administrative child support order establishing a support obligation in the amount of \$822 per month effective April 1, 2008, with arrears in the amount of \$25,050 for the period from January 1, 2006, through March 31, 2008.

Mr. R. filed an appeal and requested an administrative hearing. The assigned administrative law judge conducted a telephonic hearing on April 8, 2008. David Peltier represented the division. Mr. R. participated, as did D. and P. H. and J.'s mother, D H..

Based on the testimony at the hearing and the evidence in the record, arrears are owed for 2006 at the rate of \$929 per month, for 2007 at the rate of \$872 per month, and for 2008 at the rate of \$822 per month and the ongoing child support obligation is \$822 per month effective June 1, 2008.

II. Discussion

C. G. R. serves in the United States Army. While stationed in Alaska, his son J. was born to D H. on April 6, 2002. Mr. R. believed that the child was his. When J. was about six months old, he began living with his maternal grandparents, D. and P. H., who live in Anaktuvuk Pass. At about the same time, in September, 2002, Mr. R. was stationed in Germany pending his deployment to Iraq in April, 2003. Mr. R. remained in Iraq until July, 2004. After his return to America, in December, 2004, Mr. R. married a woman, not J.'s mother, who has an older child from a prior relationship whose father has given up his parental rights. The R.'s have a daughter, born in April, 2005.

In January, 2006, Mr. R. was deployed to Iraq and promoted to the E-6 pay range; he had seven years' service at that time. That same month, D. and P. H. filed for public assistance benefits, and the division initiated this child support proceeding. In February, 2006, J.'s mother was incarcerated; she was released on probation in August, 2006, but on occasion since then has returned to jail for probation violations.

Mr. R. learned of the child support proceeding in December, 2006, while he was in Iraq. He requested paternity testing in order to confirm that the child was his. In February, 2007, Mr. R. was temporarily stationed in Germany. At his request, he was reassigned to Fort Lewis, Washington, in May, 2007, at about the same time that genetic testing confirmed his paternity. Mr. R. has remained stationed there since that time. A judgment of paternity was issued in November, 2007.

In 2006, Mr. R. had cash income at the E-6 level of \$27,284, and he received non-cash military benefits valued at \$33,429, for total income of \$60,714. Applying standard deductions, his adjusted annual income for child support purposes was \$55,724. In 2007, his cash income was \$31,169, and his benefits were valued at \$26,520, for adjusted annual income of \$52,333. In 2008, based on his current income, Mr. R. will have cash income of \$34,081 and will receive benefits valued at \$21,209, for adjusted annual income of \$49,314. His wife is a registered nurse and anticipates obtaining her license in Washington state and obtaining full time employment there this summer.

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."¹ When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.²

In this case, Mr. R.'s income in 2006-2008 was established through his leave and earnings statements and is undisputed.

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,³ that is, total income after allowable deductions.⁴ Based on his

¹ 15 AAC 125.030(a).

² Duffus v. Duffus, 72 P.3rd 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3rd 52, 56 (Alaska 2001).

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

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

actual income, Mr. R.'s support obligation is therefore as shown on the division's post-hearing brief.

Mr. R. argued that monthly payments towards the arrears in addition to his ongoing support obligation will impose an unfair financial burden. Mr. R.'s current take home pay is approximately \$2,303 per month, which is available for household expenses other than housing (which is paid by an additional allotment).⁵ Mr. R. did not show by clear and convincing evidence that the ongoing support amount of \$822 per month is manifestly unjust in light of his current monthly cash income, particularly in light of the anticipated increase in household income that will occur when his wife obtains work.

The standard amount for amortization of arrears in the amount of \$25,000 is \$415 per month.⁶ Coupled with his ongoing support obligation of \$822 per month, Mr. R.'s total child support obligation would be approximately \$1,237 per month, which is slightly more than 50% of his available cash income each month. By law the amount withheld may not exceed 40% of the obligor's net disposable earnings, unless the division finds good cause.⁷ Mr. R. may request modification of the amount withheld, but the division's decision on such a request is not subject to administrative appeal.⁸

Mr. R. also argued that he should be provided a credit for health insurance coverage. The medical support order at issue in this case contains language requiring Mr. R. to provide health insurance coverage, but that language is made inapplicable by a specific provision exempting Mr. R. from that requirement so long as coverage is available through the Indian Health Service.⁹ Credits for health care coverage are provided pursuant to 15 AAC 124.432. By law, Mr. R. may request review of the amount of the credit, but the division's decision is not subject to administrative appeal.¹⁰

IV. Conclusion

Mr. R.'s child support obligation for the period of arrears and his ongoing support obligation should be set as stated in the division's post-hearing brief.

⁵ Exhibit 13, p. 43.

⁶ 15 AAC 125.545.(a).

⁷ 15 AAC 125.540(c).

⁸ *See generally* 15 AAC 125.550; 15 AAC 125.560.

⁹ Ex. 9, p. 3 (paragraph A), p. 4 (paragraph H).

¹⁰ 15 AAC 125.432(g).

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated March 4, 2008, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated March 4, 2008, is **AFFIRMED**:

1. Mr. R.'s arrears are set at \$929 per month, for the months from January 1, 2006-December 31, 2006, and \$872 per month, for the months from January 1-December 31, 2007, and \$822 per month for the months from January 1-June 30, 2008.
2. Amended ongoing child support is set at \$822 per month, effective July 1, 2008.

DATED: June 2, 2008.

Signed

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

DATED this 26th day of June, 2008.

By: *Signed* _____
Andrew M. Hemenway
Administrative Law Judge

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