

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

IN THE MATTER OF)	
)	
J. B.)	Case No. OAH-08-0174-CSS
_____)	CSSD Case No. 001149901

DECISION & ORDER

I. Introduction

The obligor, J. B., appeals an Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on November 29, 2007. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on April 23, 2008. Mr. B. appeared by telephone. David Peltier represented CSSD. The child is M. B. (DOB 00/00/06) and the custodian is the State of Alaska. The support amount is set in accordance with the agreement of the parties.¹

II. Facts

Mr. B. worked for VECO for the first part of 2006, but from July 2006 through February 2007 he was incarcerated. The state assumed custody of M. in October of 2006, shortly after his birth. Upon his release from custody, the Office of Children's Services worked with Mr. B. as he prepared to assume custody of his son.

Mr. B. appears to have been quite successful in preparing to be a single father, but at some point before the hearing he went out to dinner and had a couple of drinks, a violation of his probation conditions. His probation officer was waiting for him with a petition to revoke probation when Mr. B. arrived at home. At the time of the hearing, Mr. B. testified that a hearing on the petition was scheduled for a week after the child support hearing, and that if his probation was revoked he may be serving another substantial period of jail time. CSSD moved to keep the record open in order to determine the outcome before setting ongoing child support. As CSSD's Post Hearing Brief does not mention the matter, it appears that Mr. B. was not remanded to serve any more jail time.

III. Discussion

There are no material issues in dispute in this case. Although Mr. B. did have substantial earnings early in 2006, CSSD agrees that support for that year should be based on earnings during the period the order was in effect. At that time, Mr. B. was incarcerated and earning no

¹ CSSD initially moved to dismiss the case for lack of a timely appeal. At the hearing CSSD withdrew its motion in the interest of resolving the case on its merits.

income; the parties agree that \$50 per month is the correct amount for the months of October, November and December of 2006. After some discussion of how income is annualized to produce a single amount over the course of an entire year, Mr. B. and CSSD agreed that \$612 per month is the correct amount of support for 2007 and ongoing, even though Mr. B. was incarcerated during the first two months of the year, and had lower earnings between the time of his release and the time he resumed his previous job.² It is unclear from the record at what point Mr. B. took physical custody of M. CSSD should not collect support for times when M. was in the home with Mr. B., even if the state still had legal custody at that point.

IV. Conclusion

Mr. B. and CSSD are in agreement as to the correct amounts of support; support should be set accordingly.

V. Order

IT IS HEREBY ORDERED that Mr. B.' monthly support obligation for one child be set as follows:

October, 2006 – December, 2006:	\$50
January, 2007 – May, 2008:	\$612
June, 2008 – ongoing:	\$612

DATED this 30th day of May, 2008.

By: Signed
DALE WHITNEY
Administrative Law Judge

² After the hearing, CSSD produced a calculation that provided credit for an older child that Mr. B. supports, but also took into account higher actual income. Although this calculation produces a slightly higher monthly amount, the parties agreed at the hearing that \$612 was the correct amount for 2007, and also for ongoing support unless Mr. B. was remanded into custody. Mr. B. did not have notice and opportunity to comment on the higher amount in Exhibit 4.

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 18th day of June, 2008.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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