

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

IN THE MATTER OF: )  
 )  
A. M. D. )  
 )  
\_\_\_\_\_ ) OAH No. 08-0188-CSS  
CSSD Case No. 001091702

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of A. M. D. for the support of B. D. (DOB 00/00/96), C. D. (DOB 00/00/98) and E. D. (DOB 00/00/00).

The Child Support Services Division issued an amended administrative child support order setting ongoing support at the amount of \$526 per month effective February 1, 2008, and arrears at the amount of \$1,849 for the period from June 1, 2007, through January 31, 2008. Mr. D. filed an appeal, which was referred to the Office of Administrative Hearings. A hearing was scheduled for April 29, 2008.

**II. Facts**

On April 19, 2008, Mr. D. signed a receipt for the notice of the scheduled hearing. At the scheduled hearing time his telephone number of record was called and he was not available. A message was left to call the Office of Administrative Hearings, and written notice of default was provided on April 30, 2008. Mr. D. has not subsequently contacted the office.

Mr. D. has been largely unemployed since he lost his \$10 per hour job at McDonald's towards the end of 2006.<sup>1</sup> His actual income in 2007 was approximately \$7,083, including unemployment insurance benefits (\$4,338),<sup>2</sup> earned income (\$1,019),<sup>3</sup> and an Alaska Permanent Fund dividend (\$1,654). Mr. D. was unemployed in March, 2008.

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<sup>1</sup> Ex. 9, pp. 1-2.  
<sup>2</sup> Ex. 9, p. 3.  
<sup>3</sup> Ex. 9, p. 3.

### III. Discussion

Because Mr. D. has defaulted, a decision may be issued based on the evidence in the record without taking any further evidence from him.<sup>4</sup>

The division initially issued an administrative order establishing a support obligation of \$385 per month, based on Mr. D.'s estimated income at the minimum wage.<sup>5</sup> Following administrative review, an amended order was issued, setting arrears for 2007 at the rate of \$189 per month, based on actual income, and arrears and ongoing support in 2008 at the rate of \$526 per month, based on estimated income at the rate of \$10 per hour, Mr. D.'s last known wage rate.<sup>6</sup>

Mr. D.'s arrears for 2007 should be based on actual income; however, the evidence in the record indicates that Mr. D.'s actual income was slightly higher than the amount the amended order was based on. Based on the evidence in the record, the correct amount of arrears for 2007 is \$195 per month, based on actual income of \$7,083, as shown on Appendix A. His arrears in 2008 should also be based on actual income, and because Mr. D. has been unemployed a minimum order of \$50 is therefore appropriate through May 31, 2008.

In the absence of a finding that Mr. D. is voluntarily and unreasonably unemployed or underemployed, Mr. D.'s ongoing support beginning June 1, 2008, should be based on his expected annual income, that is, "the total annual income that the parent is likely to earn or receive" in 2008.<sup>7</sup> In this case, Mr. D.'s expected annual income should be determined based on: (1) current income: zero; (2) actual income in 2007: \$7,083; (3) prior wage rate: \$10;<sup>8</sup> (4) available work in the Kenai area: 10.1% unemployment in April, 2008, but historically lower rates in the summer;<sup>9</sup> and (5) the minimum wage: \$7.15.<sup>10</sup>

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<sup>4</sup> 15 AAC 05.030(j).

<sup>5</sup> Exhibit 2, pp. 1, 4; Exhibit 3.

<sup>6</sup> Exhibit

<sup>7</sup> 15 AAC 125.050(c).

<sup>8</sup> The division asserted, in its amended administrative decision, that "A review of your employment history clearly demonstrates that you possess the ability to earn between \$10 and \$16 per hour." Exhibit 7, page 6. The division did not submit any evidence of Mr. D.'s prior employment history; the only evidence of a prior wage rate in the record is the \$10 per hour wage earned in 2006.

<sup>9</sup> The division may utilize publicly-available databases in making its determinations. See 15 AAC 125.050(a). Unemployment data is available at [www.labor.state.ak.us/research/emp](http://www.labor.state.ak.us/research/emp).

<sup>10</sup> See 15 AAC 125.050(c)(1), (2), (4), (7), (8). There is no evidence in the record regarding the factors generally used to determine expected income. See 15 AAC 125.050(c)(3), (5), (9).

Based on the evidence regarding these factors and the relevant circumstances, and in particular Mr. D.'s 2007 income and the anticipated reduction in the unemployment rate during the summer, it is reasonable to expect that Mr. D. will be able to find work at the minimum wage beginning no later than June 1, 2008. The division's estimation that Mr. D. will work full time at his prior wage of \$10 per hour is inconsistent with his prior work history, which shows substantial periods of unemployment. While Mr. D. may be expected to find work at a higher wage, he may also be expected to have periods of unemployment, yielding total annual income close to the minimum wage.

#### **IV. Conclusion**

Arrears through June 1 should be based on actual income, and the ongoing support obligation should be based on expected income. The original administrative order at the minimum wage reflects Mr. D.'s actual expected income.

### **CHILD SUPPORT ORDER**

The Amended Administrative Child Support and Medical Support Order dated January 11, 2008, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated January 11, 2008, is **AFFIRMED**:

1. Mr. D.'s arrears are set at \$195 per month, for the months from June 1, 2007, through December 31, 2008, and \$50 per month, for the months from January 1, 2008, through May 31, 2008.
2. Amended ongoing child support is set at \$385 per month, effective June 1, 2008.

DATED: May 21, 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 17th day of June, 2008.

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

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