

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

IN THE MATTER OF:)
)
D. B. F.)
)
_____)

OAH No. 08-0202-CSS
CSSD Case No. 001144715

REVISED DECISION AND ORDER

I. Introduction

This case concerns the obligation of D. B. F. for the support of D. F. (DOB 00/00/05). The custodian of record is Z. B..

On March 25, 2008, the Child Support Services Division issued an amended administrative child support order establishing a support obligation in the amount of \$506 per month. Mr. F. filed an appeal and requested an administrative hearing. The assigned administrative law judge conducted a telephonic hearing on May 22, 2008. Mr. F. participated. Ms. B. did not contact the Office of Administrative Hearings and did not participate in the hearing. David Peltier represented the division.

The administrative law judge issued a proposed decision on July 11, 2008. Ms. B. filed a proposal for action, asking for a supplemental hearing. The commissioner returned the case to the administrative law judge, who conducted a supplemental hearing on September 23, 2008. Both Mr. F. and D.'s mother, D. B., participated, as did D.'s grandmother, Z. B. (through her husband). Mr. Peltier again represented the division, and Andrew Rawls provided information concerning a related case.

Based on the evidence and the testimony on record, Mr. F.'s support obligation is set at \$506 per month.

II. Facts

D. F. and D. B. have one child, D. F.. D. lives in the Philippines with her maternal grandmother, Z. B.. Mr. F. and D. B. live in Dutch Harbor. Both are subject to child support orders being enforced by the division; D. B.'s support order has been set at \$386 per month, based on her annual income of approximately \$28,000.

In 2007, D. F. was living in Dutch Harbor. That year he was employed by two seafood processors before taking a permanent position as a grocery clerk at W. P., where he is still employed. He earns \$11 per hour for regular time, and \$16.50 per hour for overtime.¹ In 2007 he earned around \$37,265, and he can reasonably anticipate substantially similar earnings in 2008. He did not receive an Alaska Permanent Fund dividend in 2007. His monthly take home pay, after deductions for health care insurance and taxes, is around \$1,750.²

Mr. F. is married and has a child born in early 2008. His wife was unemployed while caring for their child until the summer of 2008. She has returned to work as a housekeeper, and she earns about \$300-\$400 per week (net). Previously, she had worked at a seafood processor, with 2007 earnings of around \$25,000. She pays about \$250 per month for a house she owns in the Philippines. Her parents provide daycare for her infant child.

Mr. F. does not presently pay rent, although he does pay utilities, which run around \$386 per month (electricity, water, sewer). Other monthly household expenses include food (\$500), telephone (\$70), cable TV (\$54), and cellular telephone cards (\$80). Mr. F. owns two vehicles, a 1992 Chevrolet Astro in Dutch Harbor (no debt) and a 2003 Ford Explorer (\$20,000 owed; bought prior to D.'s birth), which is garaged in Hawaii, where Mr. F.'s parents live. He spends around \$400 a month on gas and \$125 a month on automobile insurance. Health insurance costs \$270 per month, and Mr. F. spends around \$150 a month on entertainment, alcohol and tobacco. His total household expenses, including entertainment but excluding personal care items and health care insurance, are around \$1,765 per month. His debts, other than the automobile loan, total around \$1,700.

D.'s maternal grandparents live in a house that they share with a live-in baby sitter. The household expenses for D. are approximately \$500 per month,³ including funds for the live-in babysitter, laundry, food, and other items, as well as D.'s proportional share of total household expenses.

¹ Ex. 6, p. 4.

² Ex. 6, p. 4. Mr. F.'s paystub shows take home pay of \$817.99 for a two-week period. The paystub reflects a deduction of \$220 for "MED125" and "DENT125". These are presumably pre-tax deductions for Mr. F.'s health care coverage, since the "GROSS" and "TRUE GROSS" figures on the paystub differ by \$220.

³ Based on an exchange rate of \$100 = 4500 Philippine pesos.

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,⁴ that is, income after allowable deductions.⁵ In this case, Mr. F. did not provide evidence to rebut the division's income determination, and his presumptive child support obligation is therefore \$506 per month, as the division calculated it.

The support obligation may be reduced if the amount as calculated under 15 AAC 125.070 would result in a manifest injustice due to unusual circumstances.⁶ The obligor must provide clear and convincing evidence of manifest injustice.⁷ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.⁸

At the initial hearing, Mr. F. argued that his child support obligation should be reduced because his current living expenses were substantially equal to his take home pay, even without the addition of a child support obligation. He argued that to impose the presumptive amount would cause substantial harm to his subsequent child, and would be manifestly unjust. The testimony and evidence at that hearing established that Mr. F.'s monthly take-home income was approximately \$1,750 per month, as compared with monthly household expenses of at least \$1,765 per month. Given Mr. F.'s available income and the fact that his wife was providing full time day care for an infant child, the administrative law judge found clear and convincing evidence of manifest injustice, and reduced the support obligation by \$148 per month, from the presumptive amount of \$506 per month to \$358 per month.

At the supplemental hearing, D. F. argued that Mr. F. had understated his income, and that a reduction in the presumptive amount was therefore unwarranted. However, she provided no evidence to support her allegation that Mr. F. had understated his income, and the available evidence supports Mr. F.'s denial that he had understated his income. But Mr. F. also stated that since the prior hearing his wife had returned to work and was earning approximately \$300-\$400 per week. Mr. F.'s total household expenses are only 50% his responsibility and his wife can contribute to the household expenses in

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

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

⁶ 15 AAC 125.075(a)(2).

⁷ 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

proportion to her income. With his share of the total household expenses reduced to reflect his wife's contribution, Mr. F.'s available income is substantially in excess of his share of the total household expenses.

Mr. F. argues that imposition of the presumptive amount is nonetheless unfair, because the cost of living in the Philippines is less than in Dutch Harbor, and because the money he and D. B. are sending to her parents will be used to support an entire household, rather than only their son. However, the custodian's testimony at the supplemental hearing was that the household expenses for D. are at least \$500 per month. Based on that testimony, it appears that the combined amount of child support to be paid by D. B. (\$386 per month) and D. F. (\$506) would be in excess of the child's necessary expenses. Nonetheless, Mr. F. did not establish by clear and convincing evidence that the presumptive amount of \$506 per month would be manifestly unjust in light of his household income after his wife returned to work. It remains manifestly unjust to impose the full amount prior to the date she returned to work, for the reasons stated in the proposed decision.

IV. Conclusion

Mr. F. has not shown by clear and convincing evidence that the presumptive support obligation for one child is manifestly unjust for the period from August, 2007, through May 31, 2008, but he has not shown that it is manifestly unjust after June 1, 2008. The presumptive support obligation should be imposed effective June 1, 2008, and prior to that time the amount should be reduced in accordance with the proposed decision.

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated March 25, 2008, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated March 25, 2008, is **AFFIRMED**:

1. Mr. F.'s arrears are \$358 per month, for August, 2007-May, 2008, and \$506 per month for June, 2008-October 31, 2008.

⁸ See 15 AAC 125.080.

2. Amended ongoing child support is \$506 per month, effective November 1, 2008.

DATED: November 4, 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 14th day of November, 2008.

By: *Signed* _____
Jerry Burnett
Acting Deputy Commissioner

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