

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

IN THE MATTER OF:	)	
	)	
F. B., JR.	)	OAH No. 08-0268-CSS
_____	)	CSSD Case No. 001150583

**CORRECTED<sup>1</sup> DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of F. B., Jr. for the support of F. B. III (DOB 00/00/88), C. C. B. (DOB 00/00/90), and J. R. B. (DOB 00/00/93). The children were in non-federal foster care during their minority.

On May 8, 2008, the Child Support Services Division issued an amended administrative child support order establishing a support obligation in the amount of \$266 per month for one child and \$359 per month for two children, effective June, 2008, with arrears in the amount of \$8,903 for the period from May 1, 2002, through May 31, 2008.<sup>2</sup>

Mr. B. filed an appeal and requested an administrative hearing. Written notice of a hearing scheduled for June 19, 2008, was sent to Mr. B. at his address of record. The assigned administrative law judge convened the hearing as scheduled and attempted to contact Mr. B. at his telephone number of record. Mr. B.'s son was contacted at that number, but Mr. B. was not available. The hearing was rescheduled for October 14, 2008; written notice was again sent to Mr. B. at his address of record. On October 14, the administrative law judge was unable to contact Mr. B. or anyone else at his telephone number of record.

Based on the evidence in the record, arrears are owed for 2002-2007 at the rate of \$50 per month, and for 2008 of \$266 for one child and \$359 for two children, and the ongoing child support obligation is \$266 per month effective December 1, 2008. Collection on the order is suspended effective March 1, 2008.

---

<sup>1</sup> The Division's motion for reconsideration to correct manifest errors is granted; this decision corrects the errors identified in the motion, pursuant to 2 AAC 64.350(b).

<sup>2</sup> Ex. 5. pp. 1-2.

## II. Facts

In 2002-2006, F. B. had minimal income.<sup>3</sup> In 2007-2008, F. B. lived most of the year in Fairbanks. While in Fairbanks, he worked at a Macdonald's. During the fishing season, Mr. B. returned to his ancestral village where he participated in subsistence activities and engaged in commercial fishing.<sup>4</sup> His total income in 2007 was \$18,376, and his adjusted annual income was \$15,960.<sup>5</sup>

Mr. B. has three children. All three children were placed in non-federal foster care in May, 2002. His oldest child turned 18 on September X, 2006, and his middle child turned 18 on February XX, 2008. His youngest child remains in non-federal foster care and is currently 15.

## 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."<sup>6</sup> When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.<sup>7</sup>

In this case, Mr. B.'s income for 2002-2007 was established based upon actual income information and on appeal he did not dispute the Division's income calculations for those years.<sup>8</sup>

A parent's presumptive support obligation is a specified percentage of that parent's adjusted annual income,<sup>9</sup> that is, total income after allowable deductions:<sup>10</sup> 20% for one child, 27% for two, and 33% for three. Because it is based on his actual, undisputed income through 2007, the Division's calculation of Mr. B.'s support obligation for arrears for 2002-2007 as being \$266 for one child, and \$359 for two, is correct.

---

<sup>3</sup> Ex. 1, pp. 7-11.

<sup>4</sup> Mr. B. son, F. B. III, volunteered this information when he was contacted at the time of the initially-scheduled hearing. His comments are consistent with the evidence in the record. See Ex. 2, pp. 1-3, 5-8, 10-11; Ex. 4.

<sup>5</sup> Ex. 2, p. 9; Ex. 5, p. 13.

<sup>6</sup> 15 AAC 125.030(a).

<sup>7</sup> Duffus v. Duffus, 72 P.3<sup>rd</sup> 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3<sup>rd</sup> 52, 56 (Alaska 2001).

<sup>8</sup> Ex. 6. See also Ex. 2, p. 1.

<sup>9</sup> 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

<sup>10</sup> 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

Although Mr. B. did not dispute the Division's income and support calculations prior to 2008, he did raise two concerns on appeal. First, he objected that the Division "should have notified [me] as soon as the child support payments started happening back in May 2002!"<sup>11</sup> Second, he asserted that he became unemployed in April, 2008, and he asked that his support obligation be reduced to \$50 per month to reflect his lack of income.<sup>12</sup>

A. The Division May Collect Arrears Owed Prior to March 1, 2008

The Division did not initiate this child support proceeding to obtain support from Mr. B. until February, 2008, nearly six years after his children were placed in foster care. When the Division establishes a support obligation for a child in state foster care, it is authorized to collect support for up to six years prior to the date the obligor is served with notice of the support proceeding.<sup>13</sup> In this case, the Division established arrears for 2002-2006 at the minimum allowable amount of \$50 per month, and for 2007-2008 at the rate of \$359 per month, based on his actual income. His total arrears through February, 2008, were \$6,826.

The standard amount for amortization of arrears in the amount of \$6,826 is \$225 per month.<sup>14</sup> By law the amount withheld may not exceed 40% of the obligor's net disposable earnings, unless the Division finds good cause.<sup>15</sup> Mr. B. may request modification of the amount withheld, but the division's decision on such a request is not subject to administrative appeal.<sup>16</sup>

B. Ongoing Support Effective March 1, 2008

The Division's amended order dated May 8, 2008, correctly established arrears through February, 2008 in the amount of \$266 per month for one child and \$359 per month for two children. As of March 1, 2008, however, Mr. B.'s middle child had emancipated; amended ongoing support from that date forward should be set at \$266 per month.

---

<sup>11</sup> Ex. 6.

<sup>12</sup> Ex. 6.

<sup>13</sup> 15 AAC 125.105(a)(1).

<sup>14</sup> 15 AAC 125.545(a).

<sup>15</sup> 15 AAC 125.540(c).

<sup>16</sup> *See generally* 15 AAC 125.550; 15 AAC 125.560.

Mr. B. argues that because he was unemployed as of April 21, 2008, his support obligation should be reduced. However, Mr. B. provided no explanation for his unemployed status other than that he chose to go to fish camp for the summer. Furthermore, the support obligation was suspended because there was no current application for services.<sup>17</sup> For these reasons, it is not manifestly unjust to maintain the presumptive support amount.

#### **IV. Conclusion**

Mr. B.'s child support obligation for the period of arrears and his ongoing support obligation should be set as stated in amended order, reduced effective March 1, 2008, to the amount for one child.

#### **CHILD SUPPORT ORDER**

The Amended Administrative Child Support and Medical Support Order dated May 8, 2008, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated May 8, 2008, is **AFFIRMED**:

1. Amended ongoing child support is set at \$266 per month, effective March 1, 2008, and is suspended pending an application for services.

DATED: December 12, 2008.

*Signed* \_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

---

<sup>17</sup> Ex. 5, p. 7.

## 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 Corrected 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 12th day of December, 2008.

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

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