

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

IN THE MATTER OF:)
)
C. L. L.) OAH No. 08-0535-CSS
) CSSD Case No. 001101947
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of C. L. L. for the support of M. M. (DOB 00/00/94). The custodian of record is J. M.

Based on the evidence in the record, the decision of the Child Support Services Division (Division) is affirmed.

II. Facts

The Child Support Services Division (Division) issued a modified administrative child support order on September 8, 2008, modifying a prior support order dated April 2, 2002, in the amount of \$50 per month, to \$727 per month effective June 1, 2008.

Mr. L. filed an appeal, which was referred to the Office of Administrative Hearings. The office sent written notice of a hearing to Mr. L. at his address of record. The assigned administrative law judge convened a hearing at the scheduled time. Mr. L. did not appear and he did not respond to a telephone message left at his telephone number of record.

III. Discussion

When the party requesting a hearing fails to appear and does not, within ten days, show reasonable cause for failure to appear, the administrative law judge may issue a decision on the record.¹ The party requesting the hearing has the burden of proving the division's action was erroneous.²

In this case, the modified support order was based on Mr. L.'s income over four consecutive quarters,³ and Mr. L. did not dispute the amount of income attributed to

¹ 15 AAC 05.030(j).
² 15 AAC 05.030(h).
³ Ex. 5, p. 3; Ex. 6.

him.⁴ Rather, Mr. L. objected that (1) he did not receive an Alaska Permanent Fund Dividend in 2007, (2) the order does not take into account his payments of \$800 per month on behalf of his two younger children, and (3) he has not been provided a credit for medical insurance.

(1) Alaska Permanent Fund Dividend

The record indicates that Mr. L. was incarcerated at the time the prior order was issued in 2002.⁵ Mr. L. would not have been ineligible for a dividend until the second year after his release.⁶ Because the record suggests that Mr. L. was released no later than 2005,⁷ it appears that he was eligible for the 2007 dividend. Not all eligible applicants receive a dividend, because dividends may be attached to pay prior debts (including child support). However, a dividend that has been attached is nonetheless income to the person entitled to it. Mr. L. did not present any evidence that he was ineligible for the 2007 Alaska Permanent Fund dividend, or that no dividend was issued in his name. Therefore, he has not shown that the Division's decision to include a 2007 dividend as income to him was erroneous.

(2) Support Payments

Mr. L. asserts that he pays \$800 per month in child support for his two younger children under an agreement with their mother and that the combined total payments of \$1,572 is in excess of his ability to pay.⁸

A parent's payment of support for prior children under a child support order is deducted from income in calculating the support obligation.⁹ However, voluntary payments of support for subsequent children are generally not deducted from income, and do not automatically reduce the support obligation.¹⁰ In this case, the Division correctly determined that Mr. L.'s presumptive support obligation for his eldest child, based on his current income, is \$727 per month. His presumptive support obligation for his two younger children, based on his current income and providing him with a credit for the

⁴ Ex. 7.

⁵ Ex. 1, p. 5.

⁶ AS 43.23.005(d)(2).

⁷ One of Mr. L.'s younger children was three in 2008.

⁸ Ex. 7.

⁹ Civil Rule 90.3(a)(1)(C).

¹⁰ See Civil Rule 90.3, Commentary at III(D); VI(B)(2).

payment of \$727 per month to his oldest child, is about \$792 per month,¹¹ nearly identical to the \$800 per month he is paying voluntarily. Even if all three children were in the same household, Mr. L.'s presumptive support obligation would be \$1,208 per month.¹² In short, the combined total of Mr. L.'s support obligation for his eldest child and his voluntary payments for his two younger children is not substantially greater than would normally be expected for an individual with his income and three children to support.

If, as Mr. L. asserts, the \$727 in child support for his eldest child is beyond his means, it was incumbent upon him to provide specific evidence to support that claim. In the absence of any such evidence, he has failed to show that the Division's decision was in error.

(3) Medical Insurance

A credit for medical insurance provided by an obligor will be provided by the Division if the obligor provides evidence of the amount of the cost of the insurance. In this case, Mr. L. did not provide any evidence of the cost of insurance coverage. Should he provide such evidence to the Division, it will adjust the amount collected as necessary. No change in the support order, however, is necessary.

IV. Conclusion

The division's order is AFFIRMED.

DATED: November 20, 2008.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

¹¹ App. A.

¹² App. B.

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 10th 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.]