

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

IN THE MATTER OF: )

J. L. E. )

) OAH No. 08-0607-CSS  
) CSSD Case No. 001062300  
)

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of J. L. E. for the support of M. S. (DOB 00/00/96). The custodian of record is G. C.

Ms. C. filed a petition for modification of an administrative support order that had set support in the amount of \$149 per month in July, 2005. The Child Support Services Division (Division) issued a modified order on October 8, 2008, increasing the amount of support to \$305 per month, effective May 1, 2008. Mr. E. filed an appeal and the matter was referred to the Office of Administrative Hearings.

The assigned administrative law judge conducted a telephonic hearing on November 26, 2008. Mr. E. and Ms. C. participated. Andrew Rawls represented the Division.

On appeal, Mr. E. did not dispute the amount of the child support order. He argued, however, that the modified order should not have been made effective until after his arrears were reduced to zero. Because there is good cause to advance the effective date of the order, the Division's order is amended.

**II. Facts**

J. E. and his family live in No Name City, Florida. The household includes Mr. E., his wife, and four children, three of his and one of hers. One of his children is older than M.; the other two are younger.

Mr. E. is an electrician. In 2006, he earned \$33,394 in wages.<sup>1</sup> In 2007, Mr. E. earned \$19,041 in wages.<sup>2</sup> In addition, in 2007-2008 Mr. E. and his wife operated an electrical

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<sup>1</sup> Ex. 5, p. 16. Mr. E.'s 2008 child support affidavit accompanies his 2007 tax return and reflects his actual wages in 2007. His 2007 child support affidavit (Exhibit 5, p. 16) is similarly accompanied by the prior year's tax

contracting business, which generated gross receipts of \$98,828 and netted \$11,388 after deductions for advertising, contract labor, insurance, and certain other expenses.<sup>3</sup> The business was unsuccessful, and ceased operating in April, 2008.<sup>4</sup> In 2008, after closing the business, Mr. E. worked for about four and a half months at D. E., earning \$15 per hour.<sup>5</sup> He was laid off in August and returned to work on September 22, also at \$15 per hour.<sup>6</sup>

Mr. E.'s wife works and earns \$12.50 per hour. The household after tax income from wages is about \$4,000 per month. Mr. E. receives no child support for his three children in the home because their mother is incarcerated. His wife receives \$400 per month in child support for her son. Mr. E. and his wife have substantial debt as a result of the failed business operation, including a tax lien of \$2,000-\$2,500 and credit card debt of \$15,000. Because of the extra costs associated with raising three children without support from the other parent, and the debts incurred in attempting to start up a business, the family budget is extremely tight.

G. C. lives in Juneau with her husband, M., another daughter (age 17), and her mother. Ms. C. has been unemployed for the last couple of years. Her husband is employed. Her mother is retired and receives a pension and Social Security totaling about \$2,350 per month. The household occupies a two bedroom apartment rented by her mother. The family contributed to a potlatch in November, 2008, which resulted in a credit card debt of about \$10,000. The household budget, like Mr. E.'s, is extremely tight.

### **III. Discussion**

For one child, a parent's basic support obligation is 20% of that parent's adjusted annual income,<sup>7</sup> that is, income after allowable deductions for such things as taxes and contributions to a retirement plan (to a maximum of 7.5% of income).<sup>8</sup>

A support order will be modified when the amount of support as calculated under 15 AAC 125.070 changes by 15% or more<sup>9</sup> or when the circumstances as a whole justify

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return. Presumably the wages on the 2007 affidavit were earned in 2006, although W-2 forms for 2006 show total wages of only \$27,464.49. *See* Ex. 5, following page 16.

<sup>2</sup> Ex. 5, p. 5.

<sup>3</sup> Ex. 5, p. 7.

<sup>4</sup> Ex. 5, p. 14.

<sup>5</sup> Ex. 8, p. 2.

<sup>6</sup> Mr. E. testified he returned to work on October 22. However, his appeal document stated he started work on September 22. Ex. 8, p. 1.

<sup>7</sup> 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

<sup>8</sup> 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

<sup>9</sup> 15 AAC 125.321(b)(1).

modification.<sup>10</sup> At the hearing in this case, Mr. E. did not object to the amount of the child support order. However, he asked that the effective date of the order be moved forward so that he could eliminate arrears that had accumulated on the prior order before it was issued.

Normally, a modification is effective on the first day of the month after service of the petition for modification.<sup>11</sup> However, the effective date may be advanced upon a showing of good cause.<sup>12</sup> In this case, there is good cause to move the effective date forward. First, Mr. E. was unemployed for a month or more at just the time that the modification was issued. Because the effective date of the modification was May 1, he immediately was in arrears. Given the tight family budget, he has limited ability to catch up after an initial arrears resulting from an unexpected increase. Second, the arrears that Mr. E. was paying off appear also to have accumulated prior to the entry of an order. Third, while Mr. E. may not have shown manifest injustice by clear and convincing evidence, the record establishes that he is saddled with extra unanticipated child support costs because his former wife is unable to contribute to the support of their three children. Advancing the effective date of the modification order mitigates those extra costs. Fourth, the record indicates that moving the effective date forward would not have a significant adverse impact on M.

#### **IV. Conclusion**

Because the amount of support as calculated under 15 AAC 125.070 has changed by more than 15%, modification is appropriate. There is good cause to move the effective date forward.

### **CHILD SUPPORT ORDER**

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

Modified ongoing child support is set at \$305 per month, effective November 1, 2008.

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<sup>10</sup> 15 AAC 125.321(b)(2)(B).

<sup>11</sup> 15 AAC 125.321(d).

<sup>12</sup> State, Child Support Enforcement Division v. Dillon, 977 P.2d 118 (Alaska 1999); Boone v. Boone, 960 P.2d 1579 (Alaska 1998).

DATED: December 31, 2008.

Signed  
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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 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 21st day of January, 2008.

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

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