

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

IN THE MATTER OF: )  
 )  
R. L. B. )  
 )  
 ) OAH No. 08-0646-CSS  
 ) CSSD Case No. 001149266  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

This case concerns the obligation of R. L. B. for the support of J. L. P. (DOB 00/00/2002). The custodian of record is Ronald C. P.

Ms. B. filed an untimely request for an administrative review, which was denied. Because Ms. B. has not shown that strict application of the time limit for filing a request for administrative review would work an injustice, the decision to deny administrative review is affirmed.

**II. Facts**

On October 25, 2007, the Child Support Services Division (Division) issued an administrative child support order in CSSD Case No. 001149266 establishing a support obligation for J., Ms. B.'s oldest child, in the amount of \$242 per month effective December 1, 2007, with arrears at the same amount from May 1, 2007-November 30, 2007.<sup>1</sup> A copy of the order was mailed to Ms. B., a resident of No Name City, at her post office box in Fort Yukon.<sup>2</sup> The return receipt, signed by M. H., is dated November 26, 2007.<sup>3</sup> Mail sent to the Fort Yukon post office box is delivered to No Name City in a mail pouch and distributed there.<sup>4</sup>

Ms. B., who had returned to No Name City with her second child, a newborn son named C., in July, 2007, learned of the existence of the order to pay support for J. soon after it arrived.<sup>5</sup> She did not contest the order, because she was on public assistance and

---

<sup>1</sup> Ex. 1, pp. 3-4.

<sup>2</sup> Ex. 1, p. 11.

<sup>3</sup> Ex. 1, p. 11.

<sup>4</sup> Testimony of R. B.

<sup>5</sup> Testimony of R. B., R. P. See In Re R.L.B., OAH No. 08-0639-CSS (Order of Dismissal, December 15, 2008).

was unable to make any payments, she was unfamiliar with and did not understand child support procedures, and she “didn’t want to deal with it.”<sup>6</sup>

On June 2, 2008, the Division issued an administrative support order in CSSD Case No. 001152273, establishing a support obligation for C. in the amount of \$50 per month, effective July 1, 2008, with arrears in the same amount for the period from July 1, 2007-June 30, 2008.<sup>7</sup> Both arrears and ongoing support were based on Ms. B.’s actual income during 2007 and 2008.<sup>8</sup> A copy of the order was sent by certified mail to Ms. B.’s post office box in Fort Yukon and was signed for by M. H. on June 11, 2008.<sup>9</sup> That same month, Ms. B.’s parental rights were terminated and her support obligation for C. ceased.<sup>10</sup>

In July, 2008, Ms. B. had a third child; Ms. B. lives in No Name City with that child and the child’s father.<sup>11</sup> In the fall of 2008, Ms. B.’s Alaska Permanent Fund dividend was attached by the Division and applied to arrears on the order for J. (\$2,761.44) and to arrears on the order for C. (\$505).<sup>12</sup> The amount collected on behalf of J. was paid directly to Mr. P.<sup>13</sup>

After her dividend was attached, Ms. B. filed a request for modification on September 29, 2008, and a request for administrative review on October 20, 2008.

The Division denied Ms. B.’s request for administrative review on November 6, 2008, on the ground that it was untimely.<sup>14</sup> Ms. B. filed a timely appeal from the denial of administrative review.<sup>15</sup> Her request for modification remained pending.

### **III. Discussion**

A person must file a timely request for administrative review and receive a decision on the request prior to filing a request for an administrative hearing.<sup>16</sup> The administrative law judge may waive the requirement for filing a timely request for

---

<sup>6</sup> Testimony of R. B.  
<sup>7</sup> OAH No. 08-0639-CSS, Ex. 1, pp. 1-2.  
<sup>8</sup> OAH No. 08-0639-CSS, Ex. 1, p. 4.  
<sup>9</sup> OAH No. 08-0639-CSS, Ex. 1, p. 12.  
<sup>10</sup> OAH No. 08-0639-CSS, Prehearing Brief.  
<sup>11</sup> Testimony of R. B.  
<sup>12</sup> Representation of D. Peltier.  
<sup>13</sup> Representation of D. Peltier.  
<sup>14</sup> Ex. 5.  
<sup>15</sup> Ex. 7.  
<sup>16</sup> 15 AAC 125.118(f); 15 AAC 05.010(i).

administrative review when strict adherence to the requirement would work an injustice.<sup>17</sup>

When a person contests an administrative support order by filing an untimely request for administrative review, the question on appeal is whether strict adherence to the requirement to file a timely request for administrative review would work an injustice. This question is substantially the same as whether to waive the time limit for filing an appeal: in both situations, the ultimate issue is whether to permit an untimely challenge to the underlying support order.

The decision to waive the time limit for filing an appeal is akin to the decision to allow the filing of an untimely appeal from a judgment.<sup>18</sup> Waiver may be granted when: (1) relief from a judgment would be available;<sup>19</sup> or (2) the facts support exercising administrative discretion to permit a late appeal after considering (a) the reasons for the delay, (b) the extent of the delay, (c) the degree of prejudice to the other parties, (d) the strength and nature of the asserted grounds for contesting the underlying order, (e) whether the agency's determination was previously contested,<sup>20</sup> and (f) any other relevant circumstances.<sup>21</sup>

(1) Relief From Judgment

The record establishes that Ms. B.'s failure to file a request for administrative review was not due to any of the reasons addressed in Civil Rule 60(b)(1), (2), (3), or (5). The record does not establish the date on which Ms. B. received a copy of the order and notice of the requirement to file a request for administrative review within 30 days.

---

<sup>17</sup> 15 AAC 05.030(k).

<sup>18</sup> See In Re R.L.M., OAH No. 07-0701-CSS, at 4 (July 22, 2008), *citing* Appellate Rules 521 and 601.

<sup>19</sup> See In Re C.J.B., OAH No. 06-0515-CSS, at 15 (April, 2008) (“...[T]he standard for waiving the appeal deadline under 15 AAC 05.030(k) is at least as broad as Civil Rule 60(b) and arguably less restrictive because it is discretionary.”). Waiver is not required when relief from a judgment would be available under Civil Rule 60(b)(1)-(5), because the director has authority to grant relief on substantially the same grounds independent of an appeal. See 15 AAC 125.125(b).

<sup>20</sup> This factor addresses the reliability of the support order from a procedural point of view. Thus, in the context of an untimely request for appeal where an administrative review has already been conducted, this factor generally weighs against granting the request for an untimely appeal: the Division has already reviewed its original decision. In the context of an untimely request for administrative review, this factor generally weighs in favor of waiver of the time limit for filing a request for administrative review: the Division has not yet reviewed its original decision.

<sup>21</sup> See, e.g., In Re A.B.H., OAH No. 07-0655-CSS, at 2 (December 7, 2007); In Re L.(M.)A., OAH No. 06-0610-CSS at 3 (November 16, 2006); In Re B.R.B., OAH No. 05-0166-CSS, at 1-2 (April 25,

However, it is undisputed that Ms. B. was aware of the order at about the time it was issued, and the Division satisfied its obligation to provide due process of law by sending the order to her correct legal address. There is no basis to grant relief under Civil Rule 60(b)(4).

(2) Administrative Discretion

(a) Reasons for Delay

Ms. B. had actual notice of the existence of the support order at the time it was issued. Although Ms. B. did not understand that her only opportunity to change the order was to file an appeal, she knew that the order was beyond her ability to pay. As she stated, she simply “did not want to deal with it.”

This factor weighs against waiver.

(b) Extent of Delay

Assuming that Ms. B. was served with a copy of the support order on November 26, 2007, the time for filing a request for administrative review expired on December 26, 2007. Ms. B. filed a request for modification on September 29, 2008, and a request for administrative review on October 20, 2008. These dates were more than six months, but less than one year, after the deadline.

Because the delay was significant but not more than one year, this factor weighs against waiver, unless there are substantial countervailing factors.<sup>22</sup>

(c) Prejudice to the Parties

There is no indication that the delay in requesting administrative review has resulted in a loss of evidence, or that memories of the relevant facts have faded to the point that witness’s ability to reconstruct the relevant events has been substantially eroded. Accordingly, allowing untimely administrative review will not prejudice Mr. P.’s ability to obtain a support order in the correct amount. To the contrary, allowing an untimely administrative review helps ensure that the support order is correct.

This factor weighs in favor of waiver.

(d) Grounds for Contest

---

2005); *In Re L.A.H.*, OAH No. 05-0480, at 1-2 (October 24, 2005). Relief for this reason is substantially equivalent to relief from a judgment under Civil Rule 60(b)(6). See *In Re C.J.B.*, *supra*, at 15, note 68.

<sup>22</sup> Cf. Civil Rule 60(b) (“The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the date of notice...”).

Ms. B. asserts that at the time the order was entered she was unemployed and on public assistance in No Name City, a remote bush village. She had given birth to a child in July, 2007, and within three months was pregnant with another child. In light of these facts, it is unlikely that during the time the order was in effect she was voluntarily and unreasonably unemployed. Indeed, in light of the Division's order against her for support of C. (\$50 per month), there is no apparent basis for concluding otherwise.

Because there is substantial evidence that the original decision was erroneous, this factor weighs in favor of waiver.

(e) Prior Contest

Ms. B. did not submit income information in response to the original order and the agency's initial decision was made on the basis of imputed income.

This factor weighs in favor of waiver.

(f) Other Relevant Circumstances

Reducing Ms. B.'s support order for J. to \$50 per month would not mean that she would receive the amounts previously attached: that money has been paid to Mr. P. and is no longer in the possession of the Division. Rather, if Ms. B.'s order for J. were reduced to \$50 per month, she would receive a credit against her future payments. Such a credit would eliminate the payment of support to Mr. P. for several years. Mr. P. is presently unemployed, and in his present circumstances even a reduction of \$50 per month would be noticed. The loss of ongoing support for J. weighs against waiver, although in light of the relatively small amount at issue, only marginally so.

**IV. Conclusion**

In this case, there is no injustice in adhering to the requirement for timely requesting administrative review.

**ORDER**

1. The motion to dismiss is GRANTED.
2. This case is DIMISSED.

DATED: January 13, 2009.

*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 29th day of January, 2009.

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

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