

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

IN THE MATTER OF:)
)
S. J. G.) OAH No. 08-0652-CSS
) CSSD Case No. 001127038
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of S. J. G. for the support of T. G. (DOB 00/00/90) and C. G. (DOB 00/00/92). The custodian of record is S. G.-F., Mr. G.'s sister.

On July 9, 2008, the Child Support Services Division issued an administrative child support order establishing an obligation for arrears in the amount of \$50 per month from September, 2003, through December, 2005, \$342 per month in 2006, and \$524 per month in 2007 and 2008 through March, and ongoing support in the amount of \$534 per month effective April 1, 2008.¹

Mr. G. filed an appeal and requested an administrative hearing. The case was referred to the Office of Administrative Hearings and the administrative law judge conducted a telephonic hearing on January 27, 2009. Andrew Rawls represented the division. Mr. G. participated, as did Ms. G.-F.

Because Mr. G. has been in the household with the children since April, 2006, arrears since that time are vacated and the ongoing support obligation is suspended.

II. Facts

S. G. and T. D. (R.) W. have two children, T. and C. The couple separated in 2000, and the Hawaii Family Court issued an order directing Ms. W. to pay \$50 per month in child support to Mr. G.²

In 2003-2005, Mr. G. was living in Hawaii. He was homeless and unemployed, and had no income. His children went to live with his sister, S. G.-F., in Juneau. Ms. G.-F. filed for public assistance on behalf of the children and in September, 2003, the Child Support Services

¹ Ex. 1.
² Ex. 10.

Division opened this child support case,³ as well as another child support case seeking support from Ms. W..⁴ In July, 2004, the division notified Ms. G.-F. of its intent to close this case,⁵ but the division did not actually close the case.

In March, 2006, Mr. G. joined his sister and his children in Juneau. Since then he has lived with his sister and the children, and has been working in the meat department at F. M., where his current wage is \$15.40 per hour. His total income in 2006 was \$17,612.57, and in 2007 was \$28,658.98. In 2008, his anticipated total income was \$36,192.14.⁶

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.”⁷ When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.⁸

In this case, there is no dispute about Mr. G.’s income. From 2003 until he came to Juneau and began living with his sister in 2006, Mr. G. was homeless and unemployed. His arrears for that period are therefore properly set at \$50 per month, including the first three months of 2006. Beginning in April, 2006, through the present time Mr. G. was in the household with his children and provided for their support. He should therefore not be charged with arrears for that period. Finally, his ongoing support amount should be based on his 2008 income, but suspended. His 2008 income, as determined by the division in its pre-hearing brief based on wages through November, was approximately \$36,192.14, yielding a suspended support obligation of \$669 per month for two children.

IV. Conclusion

Based on the testimony at the hearing and the evidence in the record, arrears should be set at the minimum amount through March, 2006, and no arrears should be assessed effective April, 2006. Ongoing support should be set at \$669 per month and should be suspended.

³ Exhibit 8.

⁴ January 8, 2009, Submission to Record.

⁵ Ex. 7.

⁶ Ex. 6.

⁷ 15 AAC 125.030(a).

⁸ Duffus v. Duffus, 72 P.3rd 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3rd 52, 56 (Alaska 2001).

CHILD SUPPORT ORDER

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

1. Mr. G.'s arrears are set at \$50 per month for September, 2003 through March, 2006, and at \$0 per month for April, 2006, through March, 2009.

2. Amended ongoing child support is set at \$669 per month, effective April 1, 2009, and is **SUSPENDED** so long as Mr. G. remains in the home with his children.

DATED: March 2, 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 26th day of March, 2009.

By: Terry L. Thurbon for _____

Signature

Andrew M. Hemenway

Name

Administrative Law Judge

Title

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