

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

IN THE MATTER OF:)
)
A. W. B.) OAH No. 09-0184-CSS
) CSSD Case No. 001155057
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of A. W. B. for the support of L. T. B. (DOB 00/00/2002) and M. Z. B. (DOB 00/00/2005). The custodian of record is N. C. S..

On March 2, 2009, the Child Support Services Division issued an amended administrative child support order establishing an obligation for arrears in the amount of \$9,024 for the period from April 1, 2008 through March 31, 2009, with ongoing support in the amount of \$752 per month.¹

Mr. B. 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 April 20, 2009. A. Rawls represented the division. Both Mr. B. and Ms. S. participated.

Because Mr. B. was in the home beginning in August, 2008, no arrears are owed after July 31, 2008, and because of unusual circumstances it is manifestly unjust to collect arrears for the brief period he was not in the home prior to then. Accordingly, arrears are set at zero; the ongoing support obligation is \$752 per month.

II. Discussion

A. B. and N. C. S. have two children. The couple lived with their children in rented premises in Girdwood until April, 2008, when they briefly separated. While he and Ms. S. were separated, Mr. B. contributed 50% of the rent on the premises (\$550 of the total rent of \$1,100 per month) by direct payments to the landlord; he contributed 50% of the utility bills during that time. Ms. S. applied for and received public assistance payments during their separation. Mr. B. was out of the family residence until the beginning of August, when the couple reconciled and Mr. B. moved back into the home.

¹ Ex. 5, pp. 1-2, 8-9.

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.”² When adequate information is available, arrears may be based on the actual income received during the period for which arrears are due.³

In this case, Mr. B. was in the home except April-July, 2008. His child support obligation during that of time should be based his actual income in 2008, which yields a monthly support obligation of \$752 for two children. There is no dispute about Mr. B.’s income or the amount of his support obligation.

However, the division’s amended support order is mistaken, for three reasons:

First, the order for ongoing support is unconditional. However, as stated in the summary of the support obligation attached to the order,⁴ because Mr. B. is in the home, the order for ongoing support should be suspended so long as he remains in the home.

Second, the order for arrears includes periods of time during which Mr. B. was in the home. For periods when Mr. B. was in the home, even if public assistance payments were paid the division does not have authority to collect them. The division, on behalf of the state, may seek reimbursement for public assistance benefits paid “to a child to whom the obligor owes a duty of support.”⁵ When the obligor is in the home and has custody, the duty of support is discharged. In this case, Mr. B. was in the home beginning in August, 2008, and no arrears are owed from that time forward, so long as he remained in the home.

Third, to the extent arrears are owed, an order for arrears is not warranted. Mr. B. contributed 50% of the cost of housing the children when he was not in the home, and he is currently in the family home with Ms. S. To enter an order for arrears at this time would mean taking money out of the household that would otherwise be available for the children’s ongoing support, even though Mr. B. actually made payments for the benefit of the children during the period for which reimbursement is sought. These are unusual circumstances, established by

² 15 AAC 125.030(a).

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

⁴ Ex. 5, p. 7.

⁵ AS 25.27.120(a); -.130(a)(2).

clear and convincing evidence, under which collection of pre-order arrears would be manifestly unjust.⁶

IV. Conclusion

Based on the testimony at the hearing and the evidence in the record, no order for arrears should be entered. Ongoing support should be suspended.

CHILD SUPPORT ORDER

1. The Amended Administrative Child Support and Medical Support Order dated March 2, 2009, is **AMENDED** as follows; in all other respects, that order is **AFFIRMED**.
2. Arrears for the period from April 1, 2008, through June 30, 2009, are set at zero.
3. Mr. B.'s ongoing support obligation is set at \$752 for two children, effective July 1, 2009, for months in which Mr. B. does not reside in the family home.

DATED: June 19, 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 7th day of July, 2009.

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

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

⁶ See Civil Rule 90.3(c), Commentary at VI(E); 15 AAC 125.075(a)(2), -.080.