

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

IN THE MATTER OF:)

A. K.)

) OAH No. 09-0255-CSS
) CSSD Case No. 001099966
)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of A. K. for the support of his children V. (DOB 00/00/1999) and B. (DOB 00/00/2001) K. The custodian of record is the children's grandmother, C. N.

On August 28, 2002, The Child Support Services Division issued an administrative order establishing Mr. K.'s support obligation at \$327 per month for V. Collection on the order was suspended effective October 1, 2007, because the family was reunited. The division issued a modified administrative order on September 18, 2008, adding B. to the order and setting support at the rate of \$445 per month for two children, with arrears in the amount of \$1,273. The order remained suspended.

Mr. K. filed an appeal and the case was referred to the Office of Administrative Hearings. The division filed a motion for summary adjudication and the assigned administrative law judge conducted a telephonic hearing on the motion on May 27, 2009. Mr. K.'s telephone number of record was called and was not answered. Erinn Brian represented the division.

Because the undisputed evidence establishes that Mr. K. is liable for arrears in the amount of \$1,273 accumulating during the period from February, 2006, through September, 2007, the division's motion for summary adjudication is granted.

II. Facts

A. K. and N. M. N. are the parents of V. and B. K. On August 28, 2002, The Child Support Services Division issued an administrative order establishing Mr. K.'s support obligation at \$327 per month for V. The order identifies the custodian as C. J. N., who is the mother of N. M. N.

From February, 2006, through September, 2007, both V. and B. were in foster care, in the custody of W. and M. K. Beginning on September 9, 2007, the children left foster care and were in the custody of Mr. K. Therefore, the child support order that had been issued in 2002 was suspended effective October 1, 2007.

In March, 2008, after the family had reunited, the Child Support Services Division initiated this modification proceeding to add B. to the order and to establish arrears for the period of time she had been in foster care. The division issued a modified administrative order on September 18, 2008, adding B. to the order and setting arrears in the amount of \$1,273 for the period from February 1, 2006, through March 31, 2008 (the modified order increased the amount of support by \$47 per month in 2006 and \$8 per month in 2007). The support order remains suspended.

III. Discussion

Mr. K.'s appeal points out that the administrative order in this case, CSSD No. 01099966, identifies C. J. N. as the custodian, and that in fact Ms. N. did not have custody of the children during the period the arrears accumulated, from October, 2006, through September, 2007: rather, during that entire time the children were in foster care, in the custody of W. and M. K.

Although the order in this case does not correctly identify the custodian for the period of time at issue, that does not affect Mr. K.'s child support obligation. As the division observes, arrears are owed to the State of Alaska for the period of time that the children were in foster care; Mr. K. does not dispute that his children were in foster care during the time at issue in this case. Evidence in the record indicates that Mr. K. has sufficient income to pay the arrears and he has not shown that paying the arrears would cause undue hardship to the children, who are currently in the home.

IV. Conclusion

Modification to add a child to the prior order was appropriate. Mr. K. is liable for arrears during the period of time the children were in foster care. The division has correctly calculated the amount due.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated September 18, 2008, is **AFFIRMED**. The ongoing support obligation will remain suspended for as long as the children are in the home.

DATED: July 6, 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 27th 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.]