

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

IN THE MATTER OF:)

B. B.)
_____)

OAH No. 09-0273-CSS
CSSD Case No. 001153733

DECISION AND ORDER

I. Introduction

This case concerns the obligation of B. B. for the support of A. B. (DOB 00/00/2007). The custodian of record is D. C.

On April 10, 2009, the Child Support Services Division issued an amended administrative child support order establishing a support obligation in the amount of \$389 per month effective May 1, 2009, with arrears in the amount of \$3,504 for the period from March 1, 2007, through April 30, 2009.

Mr. B. and Ms. C. appealed. The Office of Administrative Hearings conducted a telephonic hearing on June 30, 2009. Ms. C. participated, but Mr. B. was unavailable and did not participate. Erinn Brian represented the division.

Because Mr. B. is currently in the home and imposition of arrears is not in the best interest of the child, arrears are set at zero and the ongoing support obligation is suspended for as long as he remains in the home.

II. Facts

B. B. and D. C. were living together with their daughter A. after she was born in March, 2007. In July, the couple separated and Mr. B. moved out of the family home. While Mr. B. was out of the home, Ms. C. enrolled for public assistance through the Tanana Chiefs Conference. Mr. B. returned to the family home in September, 2007.

There are two children in the home, A. and a foster child. Mr. B. has an older child, for whom a default support order in the amount of \$1,056 per month was issued in Washington State, about a year ago.

Mr. B. is a union bricklayer who lives in Fairbanks. His total income in 2007 was approximately \$36,655; in 2008 it was about \$26,501. The company Mr. B. was working for in 2008 went bankrupt, and he has been largely unemployed since then. Ms. C. was

last employed in 2008 and is currently also unemployed while caring for her infant daughter. In the spring of 2009, Mr. B. briefly worked on a job in Anchorage but had to leave because he could not afford to maintain a separate residence there.

Mr. B.'s anticipated 2009 income, based on his earnings through April, is about \$9,405. His average income over the three year period (annualizing his 2009 income to date) is about \$27,792 per year.

III. Discussion

The division establishes an ongoing 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.”¹ When adequate information is available, arrearages should generally be based on the actual income received during the period for which arrearages are due.² For one child, a parent’s presumptive support obligation is 20% of that parent’s adjusted annual income.³

The division initially established Mr. B.’s support obligation for 2007, 2008, and 2009, and calculated pre-order arrearages for the entire period. Testimony at the hearing established that Mr. B. was out of the family home for only three months of that time, July through September, 2007. The presumptive support for that period, based on Mr. B.’s actual income in 2007, is \$501 per month. Ongoing support, in light of Mr. B.’s fluctuating income history, may best be set based on Mr. B.’s average wages over a three year period, which results in an obligation of \$389 per month.

The presumptive support obligation may be reduced if the amount would result in a manifest injustice due to unusual circumstances.⁴ The obligor must provide clear and convincing evidence of manifest injustice.⁵ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.⁶ In establishing pre-order arrearages, “unfairness may result from rigid application of the rule.”⁷

Under the facts of this particular case, as established by clear and convincing evidence, an order for arrearages would be manifestly unjust. Mr. B. was only temporarily

¹ 15 AAC 125.030(a).

² See, e.g., Spott v. Spott, 17 P.3rd 52, 56 (Alaska 2001).

³ 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

⁴ 15 AAC 125.075(a)(2).

⁵ 15 AAC 125.075(a); see Civil Rule 90.3(c)(1).

⁶ See 15 AAC 125.080.

out of the family home, and the arrears accumulated two years ago. To enter an order for payment of arrears at this time would mean taking money that would otherwise be available for the ongoing support of A., at a time when Mr. B. is unemployed. While the amount of arrears is small, and the monthly withhold would be a relatively small amount,⁸ Mr. B. has an unusually large obligation to his prior child. Taking an additional amount out of his take-home pay under these circumstances is not in A.'s best interests and would be contrary to the primary purpose of child support proceedings.⁹

IV. Conclusion

Mr. B.'s child support obligation should be set at \$389 per month. Arrears should be set at zero.

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated April 10, 2009, is **AMENDED** as follows; in all other respects, the Amended Administrative Child Support and Medical Support Order dated March 2, 2009, is **AFFIRMED**:

1. Amended ongoing child support is set at \$389 per month and is suspended for as long as Mr. B. remains in the home.
2. Mr. B. is not liable for arrears prior to the entry of this order.

DATED: August 25, 2009.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

⁷ Civil Rule 90.3, Commentary at VI(E).

⁸ An arrears of \$1,503 is amortized at the rate of \$85 per month under normal circumstances. *See* 15 AAC 125.545.

⁹ *See, e.g., Bennett v. Bennett*, 6 P.3rd 724, 727-728 (Alaska 2000).

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 16th day of September, 2009.

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

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