

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

IN THE MATTER OF:

E. M.

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) OAH No. 09-0294-CSS
) CSSD Case No. 001060892

CORRECTED DECISION AND ORDER¹

I. Introduction

This case concerns the obligation of E. M. for the support of F. S. The custodian of record is M. S. S. R.

The Child Support Services Division issued administrative orders establishing paternity on April 24, 2001, and setting support at the amount of \$415.13 per month on May 2, 2001. On September 18, 2008, Mr. M. filed a request for genetic testing and for modification of the support order. On October 7, 2008, the division denied the request for genetic testing, and on March 19, 2009, the division issued a modified support order in the amount of \$310 per month, effective November 1, 2008.

Mr. M. appealed and requested a formal hearing. The assigned administrative law judge conducted a telephonic hearing on June 11, 2009. Mr. M. and Ms. S. R. participated; Andrew Rawls represented the division.

Based on the preponderance of the evidence in the record and the testimony at the hearing, the modified child support order is sustained. Mr. M. may request credit for direct payments through his caseworker. Genetic testing must be pursued through the court system.

II. Facts

A. Procedural History

F. S. was born in California in 1996. Her mother, M. S. S. R., filed a paternity affidavit identifying the father as J. R. In December, 2000 and January, 2001, Ms. S. R. informed the Child Support Services Division that the individual she knew as J. R. was actually E. M., and she

¹ Typographical errors in the proposed decision have been corrected as requested by the division. See 2 AAC 64.350.

identified Mr. M. as the actual father.² The division then initiated this case by serving a copy of a Notice of Paternity and Financial Responsibility on E. M., also known as J. R., by certified mail to a California address on January 19, 2001.³

Mr. M. neither speaks nor reads English, the language used in the papers served on him. Mr. M. went to the California child support agency on January 31, 2001, and requested information “on settling the case.”⁴ There is no evidence that the California agency informed the Alaska agency that Mr. M. had contacted it concerning his case. On April 24, 2001, the Alaska agency issued an order establishing his paternity.⁵ On May 2, 2001, the Alaska agency issued an administrative support order in the amount of \$415.31 per month, effective June 1, 2001, with arrears in the amount of \$7,331 for the period from July 1, 1999 through May 31, 2001.⁶ The Alaska agency registered the order with the California child support agency on November 19, 2001.⁷ On January 15, 2002, Mr. M. again contacted the California agency and “sought information on paying the case off and settling with Ms. S. R.” Again, there is no evidence that the California agency contacted the Alaska agency.

In November, 2004, Mr. M. filed a request with the California agency for credit for a direct payment of \$500 to Ms. S. R.; the California agency forwarded the request to the Alaska agency, which denied it.⁸ On December 13, 2006, April 20, 2007, and January 20, 2008, Mr. M. spoke with the California agency about genetic testing. On all three occasions, the California agency informed Mr. M. that it could not assist him in obtaining genetic testing.⁹

On September 17, 2008, Mr. M. filed with the Alaska agency a request for genetic testing and for modification of the support order.¹⁰ On October 7, 2008, the Alaska agency denied the request for genetic testing,¹¹ and on March 19, 2009, the Alaska agency issued a modified support order in the amount of \$310 per month, effective November 1, 2008.¹² Mr. M. appealed and requested a formal hearing. The assigned administrative law judge conducted a telephonic

² Ex. 21, pp. 1-2; Ex. 22, pp. 1-2; Ex. 23, p. 1.

³ Ex. 1, p. 1.

⁴ Post Hearing Brief.

⁵ Ex. 3.

⁶ Ex. 4.

⁷ Ex. 17. A registration statement dated September 11, 2001, shows

⁸ Exs. 15, 16.

⁹ Mr. M. testified that he was told that genetic testing was not available. The California agency asserts that it informed Mr. M. that he needed to request testing from the Alaska agency.

¹⁰ Ex. 5, p. 7.

¹¹ Ex. 8.

¹² Ex. 9.

hearing on June 11, 2009. Mr. M. and Ms. S. R. participated; Andrew Rawls represented the Alaska Child Support Services Division. Mr. M. speaks Spanish; he testified at the hearing through an interpreter, and he testified that he cannot read English.

III. Discussion

A. Request for Genetic Testing

Mr. M. requested genetic testing. The division denied the request on the ground that the request was filed “over 5 years from the paternity order issue date.”¹³ The notice of denial does not cite to a statute or regulation requiring that requests for genetic testing must be filed within five years from the date of a paternity order, and it does not state whether or when an appeal may be filed from the denial of such a request.

The division’s regulations require the division to provide genetic testing in connection with the establishment or disestablishment of paternity.¹⁴ In this case, F.’s paternity has been established; therefore, the regulations require the division to provide genetic testing only in connection with disestablishment.

For two reasons, the division does not have authority to undertake administrative disestablishment in this case. First, the division does not have authority to disestablish paternity more than “three years after the child’s birth or three years after the petitioner knew or should have known of the father’s putative paternity of the child, whichever is later.”¹⁵ Second, the division is not authorized to undertake the administrative disestablishment of paternity unless “the child whose paternity the petitioner seeks to establish was born in this state.”¹⁶ F. S. was born in California.

Because the division lacks authority to administratively disestablish paternity in this case, it is not required by law to provide genetic testing. That the division is not required by law to provide genetic testing, however, does not mean that it is precluded from facilitating genetic testing when both parties have agreed to it. In this particular case, Mr. M. contacted the California agency before the paternity order had been issued, and requested information on “settling” the case. However, he did not expressly request genetic testing at that time. He first

¹³ Ex. 8.

¹⁴ See AS 25.27.165(b)(1), (c); 15 AAC 125.217(d) (establishment); AS 25.27.166; 15 AAC 125.232, -.236, -.242 (disestablishment).

¹⁵ AS 25.27.166(b)(2). See Sielak v. State, Department of Revenue, 958 P.2d 438 (Alaska 1998).

¹⁶ 15 AAC 125.232.

requested genetic testing from the California agency in 2006, more than five years after the paternity order was issued. Assuming that Mr. M. was provided adequate notice in 2001 of his right to seek genetic testing, that the California agency responded appropriately to Mr. M.'s contacts with it in 2001 and 2002, that the division had discretion in 2008 to order genetic testing, that Mr. M. had the right to appeal the denial of genetic testing, and that his appeal on that issue may be considered at this time, Mr. M. has not shown that the division abused its discretion. Mr. M. may pursue disestablishment in the superior court.¹⁷

B. Modification

The annual child support payment for one child in the absence of shared custody is 20% of the adjusted annual income.¹⁸ When the child support obligation changes by an amount greater than 15% of the existing order, a material change of circumstances is presumed and the existing order may be modified.¹⁹

The division initially modified Mr. M.'s support order based on estimated 2008 earnings of \$22,880, extrapolated from wages earned through October 26, 2008.²⁰ Mr. M. appealed, asserting that he had been out of work for a period of time, and that he had two other children to support.²¹ At the hearing, however, Mr. M. did not dispute the \$310 monthly support obligation. He testified that he is a seasonal migrant worker and that he is periodically unemployed, but that the period of unemployment he referred to in his appeal was not unusual. He did not dispute the amount of income attributed to him annually.

Ms. S. R. asserted that when Mr. M. is not regularly employed, he earns cash income working for his brother's trucking business that he does not report, based on hearsay reports she had received from acquaintances in California. However, Mr. M. provided persuasive testimony that his brother does not have a trucking business, but rather operates as a driver, just as Mr. M. does. The preponderance of the evidence is that Mr. M.'s reported wages reflect his actual income.

¹⁷ The Alaska Court System's Self-Help Center for Family Law, at 907-264-0851, may be able to provide information regarding this process. Additional information is available in English at <http://courts.alaska.gov/selfhelp.htm>, and in Spanish at <http://courts.alaska.gov/shcspanish.htm>.

¹⁸ Civil Rule 90.3(a)(2)(A); 15 AAC 125.010, -.070(a).

¹⁹ Civil Rule 90.3(h)(1).

²⁰ Ex. 7, p.31; Ex. 9, p. 6.

²¹ Ex. 10.

IV. Conclusion

Mr. M.'s support obligation has changed by at least 15%. A material change of circumstances is presumed and the existing support order may be modified.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated March 19, 2009, is **AFFIRMED**.

DATED: October 27, 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 Corrected 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 October, 2009.

By: Signed

Signature
Andrew M. Hemenway

Name
Administrative Law Judge

Title

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