

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

IN THE MATTER OF:)
)
 B. J. B.) OAH No. 09-0633-CSS
) CSSD No. 001155743
_____)

DECISION AND ORDER

I. Introduction

This case involves the obligor B. J. B.'s appeal of an Amended Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 28, 2009. The obligee child is S., who is 1½ years old.

The formal hearing was held on January 5, 2010. Neither Mr. B. nor the custodian, D. M. L., appeared or participated. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 15, 2010.

Based on the record and after careful consideration, CSSD's 2008 calculation of \$318 per month is affirmed; Mr. B.'s 2009 and ongoing child support is set at \$466 per month.

II. Facts

A. Proceedings

The child S. began receiving public assistance benefits in April 2008.¹ CSSD initiated a paternity action on March 10, 2009 and after genetic testing, the agency established Mr. B.'s paternity of S. on April 30, 2009.² On July 3, 2009, CSSD served an Administrative Child Support and Medical Support Order on Mr. B.³ He requested an administrative review and provided income information.⁴ On August 28, 2009, CSSD issued an Amended Administrative Child and Medical Support Order that set Mr. B.'s ongoing child support at \$530 per month, with arrears of \$7,102 for the period from April 2008 through August 2009.⁵ Mr. B. filed an

¹ Exh. 7 at pg. 8.
² Exhs. 1-4.
³ Exh. 5.
⁴ Exh. 6.
⁵ Exh. 7.

appeal on November 10, 2009,⁶ asserting CSSD did not subtract all of his mandatory deductions from his income and that in 2009 he had an extraordinary expenditure for hearing aids.⁷

On December 1, 2009, the Office of Administrative Hearings (“OAH”) sent the parties a notice of the date and time for the hearing by certified mail. Ms. L. received and signed for her notice. Mr. B.’s “green card” indicating service of the notice was not returned. Before the hearing on December 21, 2009, Mr. B. was reached by telephone but he was working in the field and requested a continuance, which was granted.⁸ The continued hearing was calendared for January 5, 2010 and the parties were notified of the new date by first class mail.

Before the continued hearing was to begin, a telephone call was placed to Mr. B.’s number, but it was not answered. Because notice of the hearing had been sent to Mr. B. by first class mail to the address he confirmed was correct, service on him of the notice of hearing was found to be effective and the hearing was conducted without his participation.⁹ CSSD stated during the hearing that the agency had revised the child support calculation from Mr. B.’s year-to-date income as reflected on his paystubs through September 30, 2009.¹⁰ From the year-to-date figure of \$29,711.26,¹¹ CSSD estimated his total 2009 income at \$39,615.01,¹² which results in a child support amount of \$494 per month for one child.¹³

B. Findings

1. After he was contacted by telephone, Mr. B. confirmed that the address the OAH has on record for him is correct;
2. Notice of the date and time for the continued hearing was sent by first class mail to Mr. B. at the address he verified;
3. Mr. B. did not appear for the continued hearing;
4. CSSD’s estimate of Mr. B.’s 2009 income is incorrect, as will be discussed below;

⁶ Exh. 8.

⁷ Exh. 8.

⁸ Mr. B. indicated he did not receive the certified notice of hearing, but he confirmed that the OAH has his correct address. On December 31, 2009, the U.S. Postal Service returned the notice of hearing, which was marked “unclaimed” after three attempts at service.

⁹ See 15 AAC 05.010(c).

¹⁰ Exh. 8 at pgs. 3-12.

¹¹ Exh. 8 at pg. 12.

¹² Exh. 9.

¹³ *Id.*

5. Mr. B.'s estimated income for 2009 is \$37,640.40, which yields a child support amount of \$466 per month.¹⁴

III. Discussion

Mr. B. filed an appeal of a child support order and he received the notice of the date and time set for the hearing. However, he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.¹⁵ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." CSSD received Mr. B.'s year-to-date paystubs through September 30, 2009. From the year-to-date figure of \$29,711.26, CSSD estimated his total 2009 income at \$39,615.01, which results in a child support amount of \$494 per month for one child. CSSD's calculation is incorrect. An examination of the obligor's paystubs reveals that the year-to-date figure includes his last paystub from 2008.¹⁶ The gross amount from that paystub, \$1,481, should be subtracted from the 2009 information in order to obtain a correct year-to-date income figure for 2009. This yields an *actual* year-to-date figure of \$28,230.26. This number is divided by nine months to obtain an average, then multiplied times twelve months to obtain an estimate of Mr. B.'s actual 2009 income of \$37,640.40.¹⁷ When inserted into CSSD's online child support calculator, this total income figure results in a child support amount for 2009 of \$466 per month.

Mr. B. also requested hardship consideration, but he did not appear at the hearing to present evidence on this issue. He submitted copies of a few bills, but these are insufficient to establish a financial hardship.

IV. Conclusion

Mr. B. met his burden of proving by a preponderance of the evidence that CSSD's Amended Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Based on the income documents he provided, Mr. B.'s 2008 child support is

¹⁴ Attachment A.

¹⁵ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁶ See Exh. 8 at pg. 3.

¹⁷ $\$28,230.26 \div 9 = \$3,136.70 \times 12 = \$37,640.40$.

correctly calculated at \$318 per month, and his 2009 and ongoing child support is now correctly calculated at \$466 per month. These figures should be adopted.

V. Child Support Order

- Mr. B. is liable for child support in the amount of \$318 per month for the period from April 2008 through December 2008; and \$466 per month for January 2009 through February 2010, and ongoing;
- All other provisions of CSSD's August 28, 2009, Amended Administrative Child and Medical Support Order remain in full force and effect.

DATED this 4th day of February, 2010.

By: Signed
Kay L. Howard
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 22nd day of February, 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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