

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

IN THE MATTER OF: )

T. L. B. )

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) OAH No. 10-0113-CSS  
) CSSD No. 001120195  
)

**DECISION AND ORDER**

**I. Introduction**

The obligor, T. L. B., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on February 2, 2010. The Obligee child is C., age 10.

The hearing was held on March 30, 2010. Both Mr. B. and the custodian, K. A. H., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on April 23, 2010.

Based on the record and after due deliberation, Mr. B.’s child support is modified to \$224 per month, effective August 1, 2009.

**II. Facts**

*A. Background*

Mr. B.’s child support obligation for C. was set at \$281 per month in October 2003.<sup>1</sup> He requested a modification review on June 18, 2009.<sup>2</sup> On July 22, 2009, CSSD notified the parties that a modification review had been requested.<sup>3</sup> Mr. B. did not provide financial information.<sup>4</sup> On February 2, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. B. did not document his income.<sup>5</sup> He provided a 2009 tax return and other financial documents with the appeal he filed on February 22, 2010.<sup>6</sup> Before the hearing, CSSD submitted a new support calculation based on Mr. B.’s 2009 tax return.<sup>7</sup>

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1 Exh. 1.  
2 Exh. 2.  
3 Exh. 3.  
4 Pre-Hearing Brief at pg. 1.  
5 Exh. 4.  
6 Exh. 5.  
7 Exh. 6.

*B. Material Facts*

Mr. B. has three child support cases that are being administered by CSSD in addition to this one for C. He is currently paying arrears on behalf of his daughter D., but there is no ongoing support order in that case because she emancipated in 2005.<sup>8</sup> Mr. B. is also paying past child support arrears on behalf of his son M., age 6, but ongoing support is suspended and in any event, M. is younger than C. Finally, Mr. B. is paying ongoing child support for a daughter named J. who is 17 years of age. The monthly support amount is \$469 but Mr. B. paid a total of only \$2,060.23 on J.'s case in 2009, which averages \$171.69 per month.

Mr. B. currently works for L. R., where he earns \$9 per hour for full-time employment. His previous employers include a roofing company, a bank and a large hotel chain, where he worked for a total of 10 years. Mr. B.'s 2009 income consists of wages of \$13,419, unemployment benefits of \$2,662 and the PFD of \$1,305, all of which total \$17,386.<sup>9</sup> A child support amount calculated from this annual income figure and which incorporates the \$171.69 per month deduction for the support Mr. B. pays for his prior child J. is \$224 per month.<sup>10</sup>

**III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>11</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. A modification is effective the first day of the month following CSSD's notice to the parties that a modification has been requested.<sup>12</sup> As the person who filed the appeal in this case, Mr. B. has the burden of proving by a preponderance of the evidence that CSSD issued the Notice of Denial of Modification Review in error.<sup>13</sup>

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." Civil Rule 90.3(a)(1)(C) provides that a parent who pays support for a prior child is entitled to a deduction in that amount from the parent's income in calculating the support obligation for a younger child. That provision of the

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<sup>8</sup> CSSD's Post-Hearing Brief at pg. 1.

<sup>9</sup> Exh. 5.

<sup>10</sup> Exh. 8.

<sup>11</sup> AS 25.27.190(e).

<sup>12</sup> 15 AAC 125.321(d).

<sup>13</sup> 15 AAC 05.030(h).

rule requires that child support payments arising from prior relationships must be ordered by a court or administrative agency and they must actually be paid.<sup>14</sup>

At the close of the hearing, CSSD was directed to prepare an up-to-date calculation of Mr. B.'s modified child support obligation. As directed, CSSD used his actual 2009 income as reported on his tax return to perform the additional calculation,<sup>15</sup> which also included a deduction for the child support he actually paid on J.'s behalf in 2009.<sup>16</sup> The child support calculation using this information results in a modified child support amount of \$224 per month.<sup>17</sup>

#### **IV. Conclusion**

Mr. B. met his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was issued in error. Mr. B. is entitled to a deduction from income for paying support for J., his prior child. Using Mr. B.'s 2009 actual income and incorporating the prior child deduction results in a child support amount of \$224 per month. This figure is correct and should be adopted.

#### **V. Child Support Order**

- Mr. B. is liable for modified ongoing child support for C. in the amount of \$224 per month, effective August 1, 2009.

DATED this 13<sup>th</sup> day of May, 2010.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>14</sup> Civil Rule 90.3(a)(1)(C).

<sup>15</sup> Exh. 8.

<sup>16</sup> Mr. B. is not entitled to a deduction for paying support for his two other children. D. turned 18 years of age in 2005, so she has emancipated and M. is younger than C. Thus, even if Mr. B. were paying support for M., Mr. B. would not be entitled to a deduction for the payments. *See* Civil Rule 90.3(a)(1)(C).

<sup>17</sup> Exh. 8.

**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 1<sup>st</sup> day of June, 2010.

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

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