

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

IN THE MATTER OF	)	OAH No. 10-0325-CSS
T. B. B. III	)	CSSD No. 001130534
	)	
_____	)	

**DECISION AND ORDER**

**I. Introduction**

On July 26, 2010, a formal hearing was held to consider the child support obligation of T. B. B. III. (Obligor) for the support of his children, T. and A. (Obligees).<sup>1</sup> Mr. B. and the custodial parent, C. B., did not participate.<sup>2</sup> Erinn Brian, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on August 6, 2010.

This case is Mr. B.'s appeal of the Division's order adding his child, A., to his existing child support order for his other child, T. The order also added some arrears for A.'s support and modified his ongoing child support obligation by setting it at a higher monthly amount. Having reviewed the record in this case and after due deliberation, I conclude that the Division's order should be upheld. Mr. B.'s modified ongoing child support obligation should be set at \$559 per month for both children.

**II. Facts**

This case is an add-a-child modification action.<sup>3</sup> Mr. B.'s child support for his child, T. was previously set in 2005 at \$229 per month based on Mr. B.'s reported income from his W-2.<sup>4</sup> The Division initiated a modification action to add A. because both children began receiving public assistance in April of 2009.<sup>5</sup> Mr. B.'s paternity of A., the new child added to the order, is not in dispute.<sup>6</sup> Mr. B. is named as A.'s father on her birth certificate.<sup>7</sup>

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<sup>1</sup> The hearing was held under Alaska Statute 25.27.170 & Alaska Statute 25.27.190.

<sup>2</sup> Neither party appeared or provided a phone number to call for the hearing. There was no answer at either party's phone number of record.

<sup>3</sup> Alaska Civil Rule 90.3(h) governs modification actions.

<sup>4</sup> Ex. 1, page 10 & the Division's Pre-Hearing Brief, page 1.

<sup>5</sup> Ex. 3, page 10 & the Division's Pre-Hearing Brief, page 1.

<sup>6</sup> Ex. 4.

<sup>7</sup> Division's Pre Hearing Brief.

The Division issued notice of the petition for modification on August 14, 2009. Mr. B. did not provide income information as required. The Division issued a Modified Administrative Child and Medical Support Order on March 23, 2010.<sup>8</sup>

The Division's order set Mr. B.'s ongoing child support obligation at \$559 per month, effective September 1, 2010.<sup>9</sup> Additional arrears totaling \$725 were also added to the prior ongoing monthly amount of \$229 for the months of April of 2009 through August 2009. These additional arrears were calculated by adding \$145 per month, which is seven-percent of the income used to set Mr. B.'s old child support amount at \$229 per month. This is to pay for the addition of A. from the month A. first received public assistance to the date that Mr. B.'s ongoing child support could be modified.<sup>10</sup>

The Division calculated Mr. B.'s modified ongoing child support using Mr. B.'s estimated 2010 income, based on his 2009 earnings and unemployment benefits as reported to the Department of Labor, plus a 2009 PFD.<sup>11</sup> Mr. B. requested a formal hearing.<sup>12</sup>

In his request for a formal hearing, Mr. B. wrote that he has a family of five and cannot afford the new support amounts. Mr. B. asserts that he has been unemployed since June of 2009, and recently moved back to Texas find a better job and to live with Ms. B. and the children.<sup>13</sup>

### **III. Discussion**

In a child support hearing, the person who filed the appeal, in this case, Mr. B., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.<sup>14</sup> Mr. B. did not participate in the hearing.<sup>15</sup> He had been informed by written notice that he could appear at the Division's Juneau Office, and a number was provided for him to call and provide a phone number at which he could be called to participate by phone at the time of the hearing. The mailing receipt for the notice for the hearing was not returned.

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<sup>8</sup> Ex. 2.

<sup>9</sup> The Division's Pre-Hearing Brief, page 1 & Ex. 3.

<sup>10</sup> This is the correct procedure for setting ongoing child support and arrears when adding a new child to an existing child support order, as set out in Alaska Regulation 15 AAC 125.340(e).

<sup>11</sup> Ex. 3, page 10.

<sup>12</sup> Ex. 4.

<sup>13</sup> Ex. 4, page 1.

<sup>14</sup> Alaska Regulation 15 AAC 05.030(h).

<sup>15</sup> Recording of Hearing.

The Administrative Law Judge called Mr. B.'s phone number of record at the time scheduled for the hearing. There was no answer. The Administrative Law Judge left a message at that number and Ms. B.'s phone number of record. The record was held open to give Mr. B. ten days to request that the hearing be rescheduled.<sup>16</sup> Mr. B. did not file a request that the hearing be rescheduled.

Since he missed his hearing, Mr. B. failed to meet his burden of proof to show that the Division's order was incorrect.<sup>17</sup> The information that Mr. B. provided simple does not show that it is more likely than not that he will not be able to earn an annual income at least equal to the amount that the Division used in its estimate. Mr. B. did not explain who the fifth member of his family is. If Mr. B. could provide more evidence to support his assertion that he is having difficulty finding unemployment he should have provided it prior to the hearing or participated at the hearing and explained his situation. Furthermore, if Mr. B. can show his Division caseworker that he has been living with his children, the Division will not collect child support for the months that he was a custodial parent.

#### **IV. Conclusion**

I conclude that the Division correctly modified Mr. B.'s ongoing child support and added A. to his child support order. If Mr. B. is unable to find work, he should let his caseworker know so that the Division can initiate an action to again modify his ongoing child support.

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

The Division's Modified Administrative Child and Medical Support Order issued on March 23, 2010, is affirmed.

DATED this 7th day of August, 2010.

By: Signed  
Mark T. Handley  
Administrative Law Judge

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<sup>16</sup> Recording of Hearing.

<sup>17</sup> This decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a decision if "a person requests a hearing and fails to appear at the hearing."

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 25<sup>th</sup> day of August, 2010

By: Signed  
Signature  
Mark T. Handley  
Name  
Administrative Law Judge  
Title

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