

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

IN THE MATTER OF:)
)
A. P. B.) OAH No. 10-0384-CSS
) CSSD No. 001069273
_____)

DECISION AND ORDER

I. Introduction

The obligor, A. P. B., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on June 29, 2010. The Obligee children are N., 12; and C., 4. The other parent is A. N.

The formal hearing was held on August 23, 2010. Mr. B. participated in person; Ms. N. did not participate in the hearing.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on August 23, 2010.

Based on the record and after careful consideration, Mr. B.’s child support is modified to \$592 per month for two children (\$439 per month for one child), effective April 1, 2010, and ongoing.

II. Facts

A. History

Mr. B.’s child support obligation for N. was set at \$253 per month in February 1999.² Ms. N. withdrew from CSSD services in 2000.³ She reapplied for services on February 2, 2010, and filed a petition for modification on March 15, 2010.⁴ On March 22, 2010, CSSD issued a notice initiating a modification review so as to add C. to Mr. B.’s child support order for N. and modify the ongoing amount.⁵ On June 29, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. B.’s child support to \$828 per month for two children, effective April 1, 2010, with additional arrears owing for C. of \$430 for February

¹ Ms. N. did not appear in person nor did she provide a contact number to be called for the hearing.
² Exh. 1.
³ Exh. 2.
⁴ Exhs. 3 & 4.
⁵ Exh. 5.

and March 2010.⁶ Mr. B. appealed on July 12, 2010, asserting he pays support for two prior children and provides medical insurance for all of the children.⁷

B. Material Facts

For the last 13 years, Mr. B. has been employed full-time by the A. A. cargo division in their local warehouse. In 2009, Mr. B. received overtime work, but he testified that in December 2009 he and other cargo division employees were told that in the future overtime would be reduced and that the company would be monitoring overtime closely in the future. At the time of the hearing, Mr. B. had received only two overtime days thus far in 2010, one of them being his birthday holiday and the other, January 1st, also a holiday. Other than those two days, Mr. B. has received only one hour of overtime because he had to work through his lunch hour one day when they were very busy in the warehouse.

CSSD submitted an affidavit of Mr. B.'s income as reported to the Alaska Department of Labor and Workforce Development.⁸ The report indicates that as of the second quarter of 2010, the obligor had earned \$24,436.33.⁹ Since two quarters equals one-half of a year, multiplying that amount times two should yield an accurate estimate of Mr. B.'s annual income for 2010. That amount is \$48,872.66, and this is the income figure that should be used to calculate Mr. B.'s 2010 and ongoing child support amount.

Other than taxes and Social Security, Mr. B.'s other mandatory deductions include a retirement contribution of 7.5% and union dues of \$58.16 per month. In addition, the obligor has two children older than N. and C. for whom he pays support through CSSD. The total for these two prior cases is \$766.63 per month.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁰ 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.

⁶ Exh. 6.

⁷ Exh. 7.

⁸ Affidavit of Andrew Rawls, received August 24, 2010.

⁹ *Id.*

¹⁰ AS 25.27.190(e).

Adding other children to a child support order is a material change in circumstances that would justify modifying the child support order even though the newly calculated support amount may not be more than a 15% change.¹¹ A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of April 1, 2010.¹²

As the person who filed the appeal in this case, Mr. B. has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.¹³

CSSD calculated Mr. B.'s modified child support at \$828 per month for two children, based on the previous four quarters of income as reported to the Alaska Department of Labor.¹⁴ This calculation should be adjusted. It utilized three quarters of earnings from 2009 when Mr. B. was earning overtime, but he is not currently receiving overtime. Mr. B. credibly testified that as of December 2009, he has earned little overtime pay and likely will not in the future. Mr. B.'s pay stubs support his claim that overtime in 2010 has been negligible, so his 2010 income should be estimated based only on his actual income for the year, not on 2009 income that included much more overtime work.

As discussed in the Facts section, above, Mr. B.'s income for 2010 is now estimated at \$48,872.66. This is the figure that should be used for the 2010 and ongoing calculation. He is also entitled to a retirement deduction of \$305.45 per month, and union dues of \$58.16. As to the prior child payments, for unknown reasons, CSSD gave Mr. B. a deduction for supporting only one prior child instead of two.¹⁵ At the hearing, CSSD verified that he pays support for two prior children totaling \$766.63 per month, so he is entitled to a deduction from income for those total payments. Inserting the above figures into CSSD's online child support calculator yields a support amount of \$592 per month for two children or \$439 per month for one child.

One final issue should be addressed. Because Ms. N. reapplied for child support services in February 2010 before she requested a modification of Mr. B.'s child support, CSSD first had

¹¹ See 15 AAC 125.321(b)(2)(B).

¹² 15 AAC 125.321(d). In this case, the notice was issued on March 22, 2010. Exh. 5.

¹³ 15 AAC 05.030(h).

¹⁴ CSSD's calculation was performed on June 29, 2010, so it appears that the four quarters of income the division used in this calculation ran from the second quarter of 2009 through the first quarter of 2010. Earnings from the second quarter of 2010 would not yet have been available at the time this calculation was completed.

to establish Mr. B.'s obligation to pay support for C. CSSD did this by adding C. to Mr. B.'s preexisting child support order of \$253 per month for N. The additional calculation was for \$215 per month for February and March 2010, for a total amount owed by the obligor for C. of \$430.

IV. Conclusion

Mr. B. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). He is entitled to additional deductions for retirement and union dues, in addition to a deduction from income for paying support for two prior children. Mr. B.'s child support is now correctly calculated at \$592 per month for two children or \$439 per month for one child. These figures should be adopted. Mr. B. is also liable for additional arrears for C. of \$215 per month for February and March 2010, a total of \$430.

V. Child Support Order

- Mr. B. is liable for modified ongoing child support for N. and C. in the amount of \$592 per month for two children (\$439 per month for one child), effective April 1, 2010, and ongoing;
- Mr. B. is also liable for additional arrears for C. of \$215 per month for February and March 2010, a total of \$430;
- All other provisions of CSSD's June 29, 2010 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 14th day of September, 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 4th day of October, 2010.

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

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