

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

IN THE MATTER OF:	)	
	)	OAH No. 10-0452-CSS
D. J. B.	)	CSSD No. 001053407
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, D. J. B., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 18, 2010. The obligee child is M., 16 years old. The custodian is A. J. H.

The formal hearing was held on October 4, 2010. Mr. B. appeared in person; Ms. H. did not participate in the hearing – no telephone number is available for her so she could not be reached for the hearing. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on October 29, 2010.

Based on the record and after careful consideration, Mr. B.’s child support is modified to \$848 per month for one child, effective July 1, 2010, and ongoing.

**II. Facts**

*A. History*

Mr. B.’s child support obligation for M. was set at \$258 per month in 1997.<sup>1</sup> Ms. H. filed a petition for modification on May 14, 2010.<sup>2</sup> On June 8, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.<sup>3</sup> Mr. B. provided income information.<sup>4</sup> On August 18, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. B.’s child support to \$829 per month for one child, effective July 1, 2010.<sup>5</sup> He appealed on September 2, 2010.<sup>6</sup>

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1 Exh. 1.  
2 Exh. 2.  
3 Exh. 3.  
4 Exh. 4.  
5 Exh. 5.  
6 Exh. 6.

*B. Material Facts*

Mr. B. and Ms. H. are the parents of M., who is 16 years of age. M. lives with Ms. H., but no other information is available regarding the custodian and child because CSSD did not have contact information available for Ms. H. She is represented by an out-of-state child support agency which did not provide a telephone number for her so she could be called for the hearing.

Mr. B. is employed by No Name Communications, where he has worked for many years. In 2007 and 2008, his annual income totaled approximately \$65,000.<sup>7</sup> In 2009 his earnings went down to \$53,564.22.<sup>8</sup> Mr. B. explained this is because 2007 and 2008 were “build-out” years during which a significant amount of construction was undertaken by the company and he earned overtime on a regular basis. Since then, Mr. B. claims that the overtime work available to him has come to a standstill as of the end of August or beginning of September 2010. As a result, he said his income has been reduced from prior years and is lower than the figure CSSD used for the child support calculation.

**III. Discussion**

Mr. B. has appealed CSSD’s calculation of his modified child support obligation. He has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.<sup>9</sup>

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>10</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 beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of July 1, 2010.<sup>11</sup>

For the modification review, CSSD calculated Mr. B.’s modified child support based on the income reported to him by the Alaska Department of Labor and Workforce Development. The division doubled his reported earnings of \$31,734.27 from the first two quarters of 2010,<sup>12</sup>

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<sup>7</sup> Exh. 7.

<sup>8</sup> *Id.*

<sup>9</sup> 15 AAC 05.030(h).

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> 15 AAC 125.321(d). In this case, the notice was issued on June 8, 2010. Exh. 3.

<sup>12</sup> *See* Exh. 7.

which resulted in total income from employment of \$63,468.54.<sup>13</sup> CSSD added the PFD to that income amount and calculated child support at \$829 per month.<sup>14</sup>

Mr. B. testified that he has not been earning overtime since either August or September of 2010, so as a result his actual income is lower than the figure CSSD used to calculate his child support. Mr. B. was asked to provide his most recent paystubs and his earnings history going back to August, which he submitted after the hearing.<sup>15</sup> CSSD then reviewed his submission, which indicates that his year to date earnings as of October 15, 2010, were \$51,673.94.<sup>16</sup> Because Mr. B. is paid twice per month, the October 15<sup>th</sup> payday was the 19<sup>th</sup> pay period of the year. CSSD divided his October 15<sup>th</sup> year-to-date income by 19 pay periods to reach an average income amount of \$2,719.68 per pay period.<sup>17</sup> CSSD then multiplied that average figure times 24 (the number of pay periods per year, if one is paid twice per month) to reach a total income figure of \$65,272.32 for 2010.<sup>18</sup> With the addition of the PFD amount of \$1,281, Mr. B.'s estimated total gross income for 2010 becomes \$66,553.32. Using this figure, CSSD calculated Mr. B.'s modified child support at \$848 per month.<sup>19</sup>

The primary issue in this appeal is whether Mr. B. would have any overtime income during the fourth quarter of 2010. He claims his overtime work ended in August or September and he filed copies of his time cards for those two months.<sup>20</sup> They show that Mr. B. worked a total of nine overtime hours in August, the last on August 26<sup>th</sup>, but that he did not receive any overtime in September.<sup>21</sup> This is consistent with his paystubs that show he did not get paid for any overtime during either of his September pay periods.<sup>22</sup> However, Mr. B. did earn overtime pay again after September, albeit not very much. His October 15<sup>th</sup> paystub shows that he worked 3.5 hours of overtime during the first half of October.<sup>23</sup> Thus, although Mr. B. did not earn

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<sup>13</sup> Exh. 5 at pg. 7.

<sup>14</sup> *Id.*

<sup>15</sup> Exhs. 8 & 9.

<sup>16</sup> Exh. 9 at pg. 2.

<sup>17</sup> Post-Hearing Brief at pg. 1.

<sup>18</sup> Exh. 10.

<sup>19</sup> *Id.* CSSD did not state a position on the overtime issue, but the division's opposition is assumed because its calculation did not factor in any change of income due to reduced overtime work.

<sup>20</sup> Exh. 8.

<sup>21</sup> Exh. 8 at pgs. 1-4.

<sup>22</sup> Exh. 9 at pgs. 3 & 4.

<sup>23</sup> Exh. 9 at pg. 2.

overtime income during September of 2010, he received it again in October of 2010, so he has not proven that there will not be any overtime available to him through the end of the year. Granted, it is possible that Mr. B. will not earn any more overtime income during 2010, but he has not established a clear pattern for this final quarter of the year. As a result, Mr. B.'s child support should be based on an extrapolation of his total estimated income for the year taken from his year-to-date earnings as of October 15<sup>th</sup>. This is the methodology CSSD used to calculate Mr. B.'s modified child support at \$848 per month and this figure should be adopted.

#### **IV. Conclusion**

Mr. B. did not meet 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). That order, which modified Mr. B.'s child support to \$829 per month, should be adjusted slightly – to \$848 per month – based on an extrapolation of his year-to-date income received as of October 15<sup>th</sup>. CSSD's calculation should be adopted.

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

- Mr. B. is liable for modified ongoing child support for M. in the amount of \$848 per month, effective July 1, 2010, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 18, 2010, remain in full force and effect.

DATED this 2nd day of December, 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 28<sup>th</sup> day of December, 2010.

By: Signed \_\_\_\_\_  
Signature  
Jerry Burnett \_\_\_\_\_  
Name  
Deputy Commissioner \_\_\_\_\_  
Title

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