

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

IN THE MATTER OF:)
)
J. D. B.) OAH No. 10-0607-CSS
) CSSD Case No. 001145455
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of J. D. B. for the support of B. R. and J. D. B. The custodian of record is C. A. S.

The Child Support Services Division issued an administrative child support order on March 19, 2010, setting ongoing support at the amount of \$701 per month.¹ In July, 2010, Mr. B. filed a request for modification of the order and provided financial information.² The division denied modification and Mr. B. appealed.³

The assigned administrative law judge conducted a telephonic hearing. Both Mr. B. and Ms. S. participated. Erinn Brian. represented the division.

Based on the preponderance of the evidence in the record and the testimony at the hearing, modified child support is set at \$349 per month, effective September 1, 2010.

II. Facts

J. D. B. worked as a tree trimmer in Tennessee, earning a wage of \$9 per hour, before moving to Alaska in 2005, where he had lined up work as a flooring installer.⁴ From 2007 on, Mr. B. worked as a carpet installer, primarily for D. A., where his hourly wage, formerly \$20.43, was \$20.80 beginning in November, 2009.⁵ His annual wages were \$32,393 in 2007 and \$24,130 in 2008. Mr. B. was laid off from his job at D.A. in the third quarter of 2009 and was unemployed for most of the fourth quarter.⁶ His total wages for 2009 were \$11,787;⁷ he received unemployment compensation totaling

¹ Ex. 1.
² Ex. 2, Ex. 4.
³ Ex. 5, Ex. 6.
⁴ J. B. testimony.
⁵ J. B. testimony; Ex. 4, p 16.
⁶ Ex. 4, p. 7; Ex. 7. p. 3
⁷ Ex. 7, p. 1.

\$2,730⁸ and an Alaska Permanent Fund dividend of \$1,305, for total 2009 income of \$15,822.⁹ Mr. B. was unemployed for most of the first two months of 2010, but returned to work full time at D.A. in late February.¹⁰

J. B. and C. S. have two children. The division established an ongoing support obligation in March, 2010, of \$701 per month, based on projected full time employment by Mr. B. during the remainder of 2010 at his prior wage of \$20.43 per hour.¹¹ In July, 2010, Mr. B. was again laid off from his job at D.A. due to lack of work.¹² Since then, he has been receiving unemployment compensation in the amount of \$195 per week through August 21, and \$182 per week thereafter (except for three weeks when he received no payments) through at least the end of 2010.¹³

After Mr. B. lost his job, Ms. S. moved to Oregon with their two children, where they live with her parents and another older child of Ms. S.'s.¹⁴ In October, 2010, after Ms. S. and the children had left Alaska, Mr. B. moved back to his home state of Tennessee, where he lives with his fiancé and their one year old child in his parents' home.¹⁵ Both Mr. B. and his fiancé are unemployed. The economy in the area is slow; Mr. B. has looked for work at the career center and has looked for work at establishments in his field and in other occupations, but he was unable to find a job before the end of 2010.¹⁶ He anticipates finding work in 2011 as a tree trimmer (which is how he earned his living before moving to Alaska in 2005) or a carpet installer. As a tree trimmer he would earn a wage around \$9.00 an hour. Working as a carpet installer, he would earn around \$500-\$600 a week if working full time.

II. Discussion

Mr. B.'s initial support obligation was set at \$701 in March, 2010, based on full-time work at his Alaska wage of \$20.43 per hour. Because Mr. B. was laid off in July, 2010, and left the state in October, all of the parties agree that the existing support order

⁸ Ex. 7, p. 3.

⁹ See Ex. 4, p. 2.

¹⁰ Ex. 4, p. 8; Ex. 7, pp. 1-2

¹¹ Ex. 1, pp. 1, 4.

¹² See Ex. 4, p. 17; Ex. 6, p. 1.

¹³ Ex. 7, pp. 2-3; J. B. testimony.

¹⁴ C. S. testimony.

¹⁵ J. B. testimony.

¹⁶ J. B. testimony.

should be modified,¹⁷ and the effective date of modification is September 1, 2010.¹⁸ The issue to be determined is what amount the modified order should be set at. Neither Mr. B. nor Ms. S. proposed a specific amount. The division proposed that Mr. B.'s modified support obligation be set at \$374 per month, based on Mr. B.'s total annual income in 2010.¹⁹

An ongoing child support obligation is based upon “the expected actual annual income that the parent will earn or receive when the child support award is to be paid.”²⁰ Mr. B.'s actual income in 2010 would be a reasonable basis upon which to project his income if Mr. B.'s circumstances after September 1, 2010, were substantially similar to what they were before that date. But in fact, Mr. B.'s circumstances have significantly changed. He was laid off from his job, and a month after the effective date of modification he relocated from Alaska to Tennessee. Therefore, Mr. B.'s expected income in Tennessee, rather than his 2010 income in Alaska, is the appropriate basis for determining his modified support obligation.

Although he had not found work by the end of 2010, Mr. B. testified that he anticipated finding work in 2011 as a tree trimmer at a wage of \$9.00 per hour, or as a carpet installer at around \$12.50-\$15 per hour.²¹ The extent to which Mr. B.'s annual income after September 1, 2010, will be reduced as a result of unemployment is uncertain: his income while receiving unemployment compensation is equivalent to about \$5 per hour, but he may find work at \$12.50-\$15 per hour as a carpet installer. Depending on when he finds work, and what kind of work he finds, Mr. B.'s total annual income beginning September 1, 2010, may be somewhat more or less than he would earn for full time work as a tree trimmer. However, the \$9.00 per hour that Mr. B. earned as a tree trimmer in Tennessee before he moved to Alaska is a reasonable figure to use as a basis for his expected earnings. Accordingly, Mr. B.'s expected annual income after

¹⁷ See, e.g., Richardson v. Kohlin, 175 P.3d 43 (Alaska 2008) (modification granted for electrician who lost job in Alaska, moved out of state in October, 2004, and was unemployed in new home state until March, 2005).

¹⁸ A modified order is effective the first day of the month following service of the notice of modification on the non-requesting parent. 15 AAC 125.321(d). In this case, Ms. S. was served with the notice in August, 2010; the modification is therefore effective September 1, 2010.

¹⁹ Post Hearing Brief.

²⁰ 15 AAC 125.030(a).

²¹ Mr. B. testified that a carpet installer in Tennessee earns around \$500-600 a week, which is equivalent to around \$12.50-\$15 per hour for a 40 hour work week.

September 1, 2010, is \$18,720, which is equivalent to full time work at \$9.00 per hour. Providing the appropriate deduction for Tennessee state income tax,²² total annual income of \$18,720 yields a child support obligation of \$349 per month, as shown on Appendix A, attached.

IV. Conclusion

Mr. B.'s child support obligation should be based upon his expected income beginning September 1, 2010. Based on his expected income during the time the modified order will be in effect, his modified support obligation is \$349 per month.

CHILD SUPPORT ORDER

1. Mr. B.'s petition for modification is **GRANTED**.
2. The Administrative Child Support and Medical Support Order dated March 19, 2010, is **AMENDED** as follows:

Modified ongoing child support is set at \$349 per month, effective September 1, 2010.

DATED: March 15, 2011.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

²² The Tennessee state income tax is 6% on income in excess of \$1,250. <http://www.tn.gov/revenue/taxguides/indincguide.pdf> (accessed March 9, 2011). The appropriate monthly deduction is shown in the space for "Other Deductions" on Appendix A.

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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 4th day of April, 2011.

By: Signed _____
Signature
Andrew M. Hemenway _____
Name
Administrative Law Judge _____
Title

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