

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

IN THE MATTER OF)	OAH No. 11-0254-CSS
W B)	CSSD No. 001150767
_____)	

DECISION AND ORDER

I. Introduction

This case is W B’s appeal of an order issued by the Child Support Services Division (Division), which denied his request to lower his monthly child support obligation. The order being appealed is the Division’s Denial of Modification of Administrative Support Order, which denied Mr. B’s petition for a downward modification of his ongoing child support order for his child, R. This order was issued on June 13, 2011.

On July 19, 2011, a hearing was held to consider Mr. B’s appeal. M G, the custodian of record in this case, participated. Mr. B also participated. The Child Support Services Division (Division) was represented by Erinn Brian, Child Support Services Specialist.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be upheld. Mr. B’s ongoing child support obligation for R should remain at \$850 per month, because there has not yet been a change in the parties’ circumstances that would justify a modification of child support. Mr. B may, however be able to lower his child support obligation by applying for children’s insurance benefits (CIB) as a result of Mr. B’s social security retirement status.

II. Facts

This case is a modification action.¹ The Division denied Mr. B’s request for modification review because the Division determined that there would not be a 15% change in Mr. B’s ongoing child support amount based on Mr. B’s reported income. Mr. B’s current ongoing child support was set based on his estimated retirement benefits, because Mr. B was planning to retire when his child support was set by an agreement after a formal hearing in 2010.

¹ Alaska Civil Rule 90.3(h) governs modification actions.

After the Division denied his request for a downward modification, Mr. B requested a formal hearing. In his request for a formal hearing, Mr. B explained that he did not believe that his retirement supplement should have been included when calculating his child support obligation.³

At the hearing, Mr. B explained he receives a FERS supplement to his retirement which is actually a social security benefit. Mr. B had contacted someone in the social security office who had indicated that social security benefits are not earnings and cannot be taken for child support.

Mr. B receives about \$57,333 per year in retirement, which includes \$809 per month as a FERS annuity supplement. Mr. B was also concerned that he should receive credit for providing health, dental and vision care coverage for R.⁴

The Division argued that Mr. B's request for a reduction in his child support was properly denied because based on his retirement income, including his FERS annuity supplement, Mr. B's child support amount for R would be \$811 per month, which is less, but not 15% less, than his current order of \$850 per month.⁵

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.⁶ At the hearing, Mr. B did not show that the Division's income estimates or calculations were incorrect.⁷ Mr. B is not entitled to having his FERS annuity supplement deducted from his income for the purpose of calculating his ongoing child support obligation for R.⁸

Alaska law provides that child support should be calculated based on the noncustodial parent's total income from all sources, less a very limited number of expenses.⁹ Social security

² Exhibits 1-4.

³ Exhibits 5.

⁴ Recording of Hearing-Testimony of Mr. B.

⁵ Exhibits 6.

⁶ Alaska Regulation 15 AAC 05.030(h).

⁷ Recording of Hearing.

⁸ Alaska Civil Rule 90.3 Commentary III.A.9.

⁹ Alaska Civil Rule 90.3 Commentary III.A & D.

benefits,¹⁰ pensions¹¹ and annuities¹² are all specifically listed as income for the purpose of calculating child support.¹³ There is no deduction allowed for retirement benefits received as social security or a FERS annuity supplement.¹⁴

It is possible that R may be eligible for children's insurance benefits (CIB) as a result of Mr. B's social security retirement eligibility. Many parents who receive Social Security Benefits do not have to pay any child support because CIB payments are first added to the parent's income when calculating child support and then credited against a parent's monthly child support obligation. The CIB credit often exceeds the monthly support amount.

If R receives CIB payments as the result of Mr. B's social security, the CIB payments would be credited against Mr. B's monthly child support obligation.¹⁵ This means that at least part of Mr. B's child support obligation might effectively be paid by Social Security. Mr. B would have to apply for these benefits on R's behalf.¹⁶

Mr. B should request another modification review if he is successful in applying for CIB payments because he would probably be entitled to a reduction in his ongoing child support for R if she qualifies for CIB.

IV. Conclusion

I conclude that the Division correctly denied Mr. B's request for a downward modification of his ongoing child support. As explained at the hearing, Mr. B should work with his Division caseworker to ensure that he receives the correct insurance credit.

¹⁰ Alaska Civil Rule 90.3 Commentary III.A.9.
¹¹ Alaska Civil Rule 90.3 Commentary III.A.13.
¹² Alaska Civil Rule 90.3 Commentary III.A.14.
¹³ Alaska Civil Rule 90.3 Commentary III.A.
¹⁴ Alaska Civil Rule 90.3 Commentary III.D.
¹⁵ *Miller v. Miller*, 890 P2d 574 (Alaska 1995).
¹⁶ A webpage on CIB payments is attached to this order.

V. Child Support Order

The Division’s Notice of Denial of Modification Review issued on June 13, 2011, is affirmed.

DATED this 22nd day of July 2011.

By: Signed
Mark T. Handley
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 12th day of August, 2011

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

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