

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

IN THE MATTER OF:)	
)	OAH No. 11-0256-CSS
J B. B)	CSSD No. 001150420
_____)	

REVISED DECISION AND ORDER

I. Introduction

The obligor, J B. B, appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on June 18, 2011. The obligee children are X, 7, K, 4, and Z, 2. The custodian is N P. B.

The initial formal hearing was held on July 18, 2011. Mr. B did not participate. Ms. B appeared by telephone with an interpreter. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

The child support decision was issued on August 17, 2011. Mr. B subsequently filed a Proposal for Action requesting that the decision not be adopted by the commissioner but rather, remanded to the administrative law judge to take additional evidence and make additional findings regarding his child support obligation. Specifically, Mr. B asserted that he did not move out of the country before the hearing but rather merely traveled to Ethiopia to bring his mother back to the United States. He also claimed he was forced to quit his job because of concerns about his health, so his child support obligation should not be calculated based on the income from his former employment.

On September 22, 2011, Deputy Commissioner Jerry Burnett remanded the decision to the administrative law judge to conduct a supplemental hearing and provide Mr. B with the opportunity to present evidence about his case. The supplemental hearing was held on October 19, 2011. Mr. B appeared in person; Ms. B participated by telephone. Both parties were assisted by interpreters. Andrew Rawls once again appeared on CSSD's behalf.

This revised decision on remand replaces the original decision and order in its entirety. Based on the record and after due deliberation, Mr. B has met his burden of proving by a preponderance of the evidence that there is "good cause and material change of circumstances"

sufficient to modify his child support obligation. Therefore, his child support is modified to \$339 per month for three children, effective June 1, 2011, and ongoing.

II. Facts

A. Procedural Background

Mr. B's child support was set at \$1,148 per month in May 2010.¹ On May 17, 2011, Mr. B requested a modification of his order.² On May 19, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. B provided 2010 income information.⁴ On June 18, 2011, CSSD issued a Notice of Denial of Modification Review for the reason that there was no material change in circumstances.⁵ Mr. B appealed on June 28, 2011, asserting a change in circumstances.⁶

B. Material Facts

Mr. B is Sudanese. He and Ms. B emigrated to the United States from No Name Place. They previously lived in Minnesota and arrived in Alaska in 2006 with their oldest child, X, who was two years old at the time. Their younger two children, K and Z, were born in Alaska. Mr. B began working on the North Slope the same year he moved to Alaska. He was employed by No Name until April 8, 2011. He testified that lung capacity tests showed significant deterioration in his lungs since he began working on the slope so he left his job because of concerns about his health. In a letter dated July 21, 2011, Mr. B's physician wrote that with the "lung volumes" indicated in the tests, he was no longer qualified to wear a respirator,⁷ which Mr. B stated he was required to wear on the job. As a result, he could not return to his former employment without medical clearance. Mr. B filed a worker's compensation claim after returning to the United States with his mother.⁸

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exh. 5.
6 Exh. 6.
7 Exh. A at pg. 1.
8 Exh. B at pg. 1.

Mr. B is currently receiving unemployment benefits of \$221 per week.⁹ Annualized, this amount equals \$11,492 per year.¹⁰ Adding the Permanent Fund dividend results in annual income of \$12,666, which yields a child support amount of \$339 per month for three children.¹¹

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹² 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.

CSSD denied Mr. B’s modification request because a report supplied by the Alaska Department of Labor and Workforce Development indicates that he voluntarily quit his job on April 4, 2011.¹³ The agency was within its authority to deny Mr. B’s petition for modification on the basis of voluntary unemployment.¹⁴

If a parent is found to be voluntarily and unreasonably unemployed, his or her child support amount may be calculated from that parent’s “potential income,” which should be based on his or her “work history, qualifications and job opportunities.”¹⁵

In cases in which voluntary unemployment becomes an issue, the court or administrative law judge must determine whether the parent has engaged in voluntary conduct “for the purpose of becoming or remaining unemployed.”¹⁶ It is also necessary to determine whether the parent’s unemployment or underemployment is unreasonable. An integral part of the analysis is whether the parent’s lack of employment is a result of “economic factors,” as in being laid off, or of “purely personal choices.”¹⁷ It is not necessary to prove the individual was purposefully avoiding a support obligation, or acting in bad faith, in order to impute income to a noncustodial parent.¹⁸ Oftentimes in conjunction with a voluntary unemployment case the question arises

⁹ Exh. B at pg. 2.

¹⁰ \$221 x 52weeks = \$11,492.

¹¹ Attachment A.

¹² AS 25.27.190(e).

¹³ Exh. 7 at pg. 2.

¹⁴ See Civil Rule 90.3(a)(4).

¹⁵ Civil Rule 90.3(a)(4).

¹⁶ *Bendixen v. Bendixen*, 962 P.2d 170, 172 (Alaska 1998).

¹⁷ *Vokacek v. Vokacek*, 933 P.2d 544, 549 (Alaska 1997).

¹⁸ *Kowalski*, 806 P.2d at 1371.

whether the parent is unemployed because of a medical condition. An obligor who claims he or she cannot work or pay child support because of a disability or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.¹⁹

Now that Mr. B has been able to present his evidence at the hearing, he has proven by a preponderance of the evidence that a physician has determined he is no longer medically qualified to wear a respirator, which was required for his previous employment. Mr. B initially was voluntarily unemployed because he left his job on the North Slope, but his physician's decision to disqualify him from using a respirator means that he cannot work for that employer in that job position any longer. Thus, at this time he is neither voluntarily nor unreasonably unemployed. As a result, his prior income from earnings may not be used to calculate his child support obligation.

Mr. B is in the process of transitioning to other employment or further educational pursuits, so it is not appropriate to calculate his ability to pay support from his past earnings. However, he has been receiving unemployment benefits on a consistent basis, so those funds should be used to calculate his support obligation.²⁰ A child support amount for three children based on Mr. B's unemployment benefits is \$339 per month.²¹ His child support obligation should be modified to this amount, effective June 1, 2011.²²

IV. Conclusion

Mr. B met his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was issued in error, as required by 15 AAC 05.030(h). Mr. B is not voluntarily nor unreasonably unemployed. His child support should be modified based on his unemployment benefits, which results in a child support amount of \$339 per month for three children, effective June 1, 2011.

¹⁹ *Id.*

²⁰ Civil Rule 90.3 specifically includes unemployment benefits in a parent's income. *See* Civil Rule 90.3, Commentary III.A.12.

²¹ Attachment A.

²² The effective date of a modification is the first month after CSSD issues the notice that a petition for modification has been filed. 15 AAC 125.321(d). In this case, the notice was issued on May 19, 2011. Exh. 3.

V. Child Support Order

- CSSD's Notice of Denial of Modification Review dated June 18, 2011, is VACATED;
- Mr. B is liable for modified child support in the amount of \$339 per month for three children, effective June 1, 2011;
- All other provisions of the previous support order in his case, the Modified Administrative Child Support and Medical Support Order dated May 20, 2010, remain in full force and effect.

DATED this 7th day of November, 2011.

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 7th day of November, 2011.

By: Signed
Signature
Angela M Rodell
Name
Deputy Commissioner
Title

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