

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

IN THE MATTER OF:	)	
	)	OAH No. 11-0285-CSS
A J. B	)	CSSD No. 001038655
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, A J. B, appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). Mr. B's child support obligation is for one child, A. The custodian of record is R G.

A hearing was scheduled for August 15, 2011. Mr. B did not appear. He subsequently showed reasonable cause for his failure to appear,<sup>1</sup> and the hearing was rescheduled and held on September 8, 2011. Mr. B appeared by telephone. CSSD was represented in person by Child Support Specialist Andrew Rawls.

Based on the evidence in the record, Mr. B's ongoing child support obligation should be modified and set at \$160 per month.

**II. Facts**

*A. Background*

An Administrative Child Support and Medical Support Order was issued on September 20, 2004, setting ongoing child support at \$50 per month.<sup>2</sup> Notice of Petition for Modification of Administrative Support Order was mailed on May 2, 2011.<sup>3</sup> A Modified Administrative Child Support and Medical Support Order was issued on July 1, 2011, setting ongoing child support at \$260 per month for one child.<sup>4</sup> Mr. B appealed, stating that he earned less than the amount calculated by CSSD and was currently unemployed.<sup>5</sup>

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<sup>1</sup> 15 AAC 05.030(j).  
<sup>2</sup> Exhibit 1.  
<sup>3</sup> Exhibit 2.  
<sup>4</sup> Exhibit 3.  
<sup>5</sup> Exhibit 4.

*B. Material Facts*

Mr. B has worked in the restaurant industry and in the construction industry.<sup>6</sup> He last worked as a kitchen helper in King Salmon, but is currently living in Anchorage. He has been looking for construction work, but now that the construction season is winding down he intends to also look for restaurant work.

During the first two quarters of 2011, Mr. B earned only \$1,738.51 in wages. Through July 30, 2011, he received \$3,852.00 in unemployment benefits.<sup>7</sup> During 2010, he earned \$10,056.57 in wages, and received \$2,215.00 in unemployment benefits.<sup>8</sup> He earned \$10,797.00 in wages during 2009.<sup>9</sup>

**III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>10</sup> Civil Rule 90.3(a)(1) provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources." Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>11</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. If the 15% change has not been met, CSSD may modify the child support obligation, but is not required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>12</sup> Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.<sup>13</sup>

A parent's child support obligation is generally based on a percentage of the parent's adjusted income.<sup>14</sup> This obligation is typically based on the amount the parent is likely to earn when the child support is due.<sup>15</sup> In this case, Mr. B will continue to receive \$126 per week in

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<sup>6</sup> Unless otherwise noted, the factual findings are based on Mr. B's testimony.

<sup>7</sup> Exhibit 5.

<sup>8</sup> Exhibit 5.

<sup>9</sup> Exhibit 5.

<sup>10</sup> *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>11</sup> AS 25.27.190(e).

<sup>12</sup> 15 AAC 125.321(d).

<sup>13</sup> 15 AAC 05.030(h).

<sup>14</sup> Civil Rule 90.3(a)(2)

<sup>15</sup> Civil Rule 90.3, Commentary III.E.

unemployment compensation until he finds another job.<sup>16</sup> This equates to annual income of \$6,552. If he obtains a job, he will likely only earn minimum wage, and it might not be a full time position. Between his unemployment benefits and any job he receives before the end of this year, Mr. B's annual income for 2011 is likely to be about \$9,000. This is a little less than he earned during the prior two years. Using this as his expected annual income and inserting that amount and one Permanent Fund Dividend<sup>17</sup> into CSSD's online support calculator results in a child support obligation of \$160 per month for one child.<sup>18</sup> Because this amount is more than 15% greater than the prior child support obligation of \$50 per month, Mr. B's child support obligation should be modified, but not in the amount calculated by CSSD.

#### **IV. Conclusion**

Mr. B has met his burden of showing that CSSD's calculation was incorrect. His child support obligation should be calculated based on his expected annual income, which is less than the amount assumed by CSSD. The new child support obligation becomes effective on the first day of the month following the notice of the petition for modification.

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

- Mr. B's ongoing child support obligation is set at \$160 per month effective June 1, 2011.
- All other provisions of the July 1, 2011 Modified Administrative Child Support and Medical Support order remain in effect.

DATED this 15<sup>th</sup> day of September, 2011.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>16</sup> A portion of this benefit is withheld to pay child support, but that portion still counts as income to him since it is used to pay his obligation.

<sup>17</sup> Even if garnished to pay other debts, this PFD counts as income.

<sup>18</sup> Attachment 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 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 3<sup>rd</sup> day of October, 2011.

By: Signed  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

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