

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

IN THE MATTER OF)	
H D. B JR.)	OAH No. 12-0074-CSS
)	CSSD No. 001179190
_____)	

DECISION AND ORDER

I. Introduction

This case is H D. B's appeal of an order issued by the Alaska Child Support Service Division (Division). That order established Mr. B's child support obligation for the child, L. A hearing was held in Mr. B's appeal on April 12, 2012. The custodian of record, D E. N, the child's mother, participated in the hearing. Mr. B also participated. Andrew Rawls, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on April 22, 2012.

Having reviewed the record in this case and after due deliberation the Administrative Law Judge concludes that Mr. B's monthly child support for L should be set at \$1,248, in accordance with the Division's latest calculations at Exhibit 13. Mr. B may wish to request a modification after his pending disability evaluation if his earning potential changes significantly.

II. Facts

Ms. N's requested the Division's services. The Division issued an Administrative Child and Medical Support Order on September 29, 2011. In this order, the Division set Mr. B's ongoing child support for L at \$1,043 per month based on Mr. B's historical earnings. This order also set arrears going back to September 2011, the month that the application of services was filed. Mr. B filed a request for an Administrative Review. Paternity is not in dispute. Mr. B is named as the father on L's birth certificate. In an Administrative Review Decision dated January 18, 2012, the Division affirmed its original order.¹

Mr. B filed a request for a formal hearing. At the hearing, Mr. B explained that he is going in for intensive treatment for his rheumatoid arthritis in June of 2012 and will be evaluated to determine whether he will be able to continue to work or apply to start receiving disability

benefits. Mr. B has had both knees replaced and is currently unable to work due to arthritis of the joints in his upper body. Mr. B is a union heavy equipment operator, who works seasonally in the construction industry. He typically works from March through November. In 2011, Mr. B earned \$95,779.61.²

Mr. B has an adopted child living with him. The adopted child is older than L, but was adopted after L's birth.³

The Division provided new calculations using the updated income information that was provided before the hearing. These calculations result in a monthly child support obligation of 1,248. Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations are correct and that the income used in these calculations is correct.⁴

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.⁵ At the hearing, Mr. B and the Division went through the Division's latest calculation. Based on that discussion those calculations appear to be correct. These calculations are based on updated 2011 income information provided by Mr. B.

Mr. B is not entitled to a reduction in his child support obligation for L due to his adoption of an older child after L was born. Alaska Civil Rule 90.3(a)(1)(C) provides that a parent is entitled to a deduction from income for "child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid" A companion provision of the rule, Civil Rule 90.3(a)(1)(D), provides that a parent is entitled to a deduction from income for the cost of providing support "for children from prior relationships living with the parent."⁶ Neither of these deductions is applicable in this case.

A "prior relationship" within the meaning of Civil Rule 90.3(a)(1)(D) is a relationship of the parent; that is, the child must be the parent's biological child from a prior relationship or the

¹ Exhibits 1-4.
² Exhibit 7 & Recording of Hearing.
³ Recording of Hearing & Exhibit 13.
⁴ Recording of Hearing & Exhibits 9-14.
⁵ Alaska Regulation 15 AAC 05.030(h).
⁶ Civil Rule 90.3(a)(1)(D).

parent's adoptive child in order to qualify for the deduction.

A parent's obligation to support a biological child begins when the child is born.⁷ Thus, with biological children, the date of birth generally determines whether a child is a child of a prior relationship. This is not necessarily true with adopted children, who are considered to be from prior relationships only if they are adopted before the parent's obligation arose to support the child for whom support is being calculated. It is the adoption itself that triggers the adoptive parent's obligation to support the adoptive child. Children who are adopted after the parent's support obligation arose for the child of the order are considered "subsequent children," not prior children. The commentary to Civil Rule 90.3 defines "subsequent children" as "children . . . who were born or adopted after the support obligation arose."⁸

If Mr. B is determined to be disabled, L may qualify to receive Children's Insurance Benefit (CIB) payments if Mr. B qualifies for social security benefits. Most parents who are living on 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. If L receives CIB payments as the result of Mr. B's social security, the CIB payments will be credited against Mr. B's monthly child support obligation.⁹ This means that some of Mr. B's child support obligation will effectively be paid by Social Security. Mr. B's ongoing child support payments may be reduced if he cannot return to work after his treatment if he files a request for a modification after the evaluation is complete.

IV. Conclusion

Mr. B's 2011 monthly child support arrears and ongoing child support should be adjusted in accordance with the Division's latest calculations. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

V. Child Support Order

1. Mr. B's ongoing child support for L is at \$1,248 per month effective June 1, 2012.
2. Mr. B is liable for child support arrears for L in the monthly amount of \$1,248 for the months of September 2011 through May 2012.

⁷ *CSSD v. Kovac*, 984 P.2d 1109 (Alaska 1999).

⁸ *In Re L. S.*, OAH No. 06-0630-CSS at 4 (Commissioner of Revenue 2006). *See also* Civil Rule 90.3, Commentary VI.B.2 (referencing "subsequent children" as "children . . . who were born or adopted after the support obligation arose."); *CSSD v. Kovac* at 1111.

⁹ *Miller v. Miller*, 890 P2d 574 (Alaska 1995).

3. The Division should give the parties the appropriate debit or credit for their out-of-pocket expenses for providing health insurance coverage for L.
4. All other provisions of the Administrative Review Decision dated August 25, 2010 and the Administrative Child and Medical Support Order issued on December 27, 2011 remain in effect.

DATED this 25th day of May, 2012.

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 June, 2012

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

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