

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

IN THE MATTER OF:)

V O. B)

OAH No. 12-0142-CSS

CSSD No. 001065794

DECISION AND ORDER

I. Introduction

V O. B has appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 23, 2012. The obligee child is Z, 16. The other party and custodial parent is W L. K.

The formal hearing was held on June 21, 2012. Both parties appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, the Modified Administrative Child Support and Medical Support Order CSSD issued on April 23, 2012, is vacated. According to Mr. B's medical provider, the obligor is disabled and unable to work. Thus, there has not been a material change in circumstances that would warrant a modification of Mr. B's support obligation. Accordingly, his child support obligation shall remain at \$50 per month.

II. Facts

A. Procedural History

Mr. B's child support obligation for Z was set at \$50 per month in 2010.¹ On March 6, 2012, Ms. K requested a modification review.² On March 9, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. B provided letters from the Department of Veterans' Affairs regarding his circumstances.⁴ On April 23, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. B's child support to \$258 per month.⁵ He appealed on May 22, 2012, asserting he has not worked since 2009 due to a motor vehicle accident, and also that since February 2012, he has lived in the

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.

Department of Veterans Affairs (VA) domiciliary, where he is receiving ongoing medical attention to recover from the accident.⁶

B. Material Facts

Mr. B and Ms. K are the parents of Z, 16, who lives full-time with his mother. Mr. B has been living at the VA domiciliary since February 2012.

Mr. B is disabled from work. He was in a motor vehicle accident in 2009 and has been unemployed since then. He has had ongoing medical care but the injuries he received in the accident still have not been fully resolved. Mr. B was anticipating having hip replacement surgery approximately one month after the hearing. In addition to his physical ailments, Mr. B has been diagnosed with Post Traumatic Stress Disorder (PTSD). Mr. B has applied for Social Security disability, but he has been denied and he also lost the appeal of the denial. The Advanced Nurse Practitioner (ANP) at the VA domiciliary considers him “currently unable to work due to ongoing physical issues resulting from several motor vehicle accidents.”⁷

Mr. B does not engage in any job hunting activities because he has not been released for work. In the past he has had several different types of employment, such as roughneck, carpenter and sales, and in addition he is a skilled mechanic. In the past he has fixed cars for resale, but it is very difficult to support oneself with this kind of work.

Mr. B has a girlfriend who owns her own home, but currently she is not available to assist him because she is recovering from surgery herself. Prior to his moving into the VA domiciliary, Mr. B lived with his girlfriend.

In December 2010, Mr. B received a settlement of about \$150,000 for the accident, but it is not known whether any of those settlement proceeds were meant to compensate him for lost wages. He testified that his medical costs have exceeded \$200,000, and are rising.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁸ 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. A modification is effective beginning the

⁶ Exh. 6.

⁷ Exh. 4 at pg. 2.

⁸ AS 25.27.190(e).

first of the month after the parties are served with notice that a modification has been requested.⁹ In Mr. B's case, the notice was issued on March 9, 2012, so any modification of his support obligation would be effective as of April 1, 2012.¹⁰

The person who filed the appeal, in this case, Mr. B, has the burden of proving by a preponderance of the evidence that the agency's modification order was incorrect.¹¹

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." An obligor parent has the burden of proving his or her earning capacity.¹² 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.¹³

Although it was an ANP, not a physician, who wrote that Mr. B cannot work due to the ongoing medical issues from his accident, her assessment that Mr. B is currently disabled from work is sufficient to meet his burden of proof on this issue. Ms. K claimed that Mr. B can work because he has a history of working under the table fixing cars for resale, but there was no evidence submitted that would enable the administrative law judge to quantify that potential income for child support purposes. In essence, there has not been a "material change in circumstances" in Mr. B's case that would warrant modification of his child support obligation. Thus, Mr. B met his burden of proof that he is disabled from work, and as a result, his child support should remain at the minimum amount of \$50 per month, due to his lack of income. He may eventually qualify for Social Security disability, or he may be admitted to a part-time work program through the VA, but it is too soon to tell.

IV. Conclusion

Mr. B met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. He is disabled from work due to ongoing medical issues related to a 2009 motor vehicle accident. There has not been a "material change in circumstances" that warrants a modification of his child

⁹ 15 AAC 125.321(d).

¹⁰ Exh. 3.

¹¹ 15 AAC 05.030(h).

¹² *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹³ *Id.* at 1371.

support obligation. As a result, his child support should remain at \$50 per month, as set in 2010. CSSD's modification order should be vacated. This is not a variance under Civil Rule 90.3(c).

V. Child Support Order

1. CSSD's Modified Administrative Child Support and Medical Support Order dated April 23, 2012, is VACATED;
2. Mr. B's child support obligation for Z shall remain at \$50 per month, as set in 2010.

DATED this 6th day of September, 2012.

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 26th day of September, 2012.

By: Signed

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

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