

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

IN THE MATTER OF:)

O J. B)

) OAH No. 12-0742-CSS

) CSSD No. 001140169

DECISION AND ORDER

I. Introduction

The obligor, O J. B, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 27, 2012. The obligee child is D, 8. The custodial parent is T U.

The hearing was held on November 5, 2012. Both parties appeared in person. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. B's child support is modified to \$917 per month for one child, effective August 1, 2012, and ongoing.

II. Facts

A. Procedural Background

Mr. B's child support obligation for D was set at \$258 per month in March 2012.¹ On July 19, 2012, Ms. U initiated a modification review.² On July 27, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. B provided financial information.⁴ On September 27, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set his ongoing child support at \$857 per month, effective August 1, 2012.⁵ He appealed on October 10, 2012, asserting his income is seasonal and unreliable.⁶ Prior to the hearing, CSSD filed an extract of his earnings as reported to the Alaska Department of Labor and Workforce Development from 2009 forward.⁷

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.
⁶ Exh. 6.
⁷ Exh. 7.

B. Material Facts

Mr. B is currently employed by No Name, Inc. He began his employment with the company during the fourth quarter of 2011.⁸ During 2012, Mr. B briefly had a trial period working on the North Slope for No Name. He explained that the job he tried out for involved heavy-duty tire work and some driving. However, he desired more driving time and less work with tires, and No Name urged him to stay with their company, so as a result, he did not accept the North Slope job.

Mr. B's work with No Name pays \$23 per hour for straight time. He has several different jobs, depending on the season, including plowing snow during the winter. His employment has variety throughout the year, but his earnings are not so erratic that it is considered a strictly seasonal position. His employer wrote that Mr. B is a laborer and truck driver and that there are no set or guaranteed hours, this due to the weather and whether they have work available. Also, Mr. B is an employee in good standing at the company and his employment there is not at risk.⁹

Mr. B's year to date gross income as of November 2, 2012, was \$64,325.05.¹⁰ Because the weather often determines how much he works during the winter, and also because there has not yet been significant snowfall in 2012, CSSD concluded that Mr. B would not work as much during the last two months of the year. The agency determined his average quarterly earnings with No Name have been \$17,436.19.¹¹ CSSD multiplied his average quarterly earnings by four quarters and thus estimated his 2012 earnings would be approximately \$69,744.76.¹² This income figure yields a child support calculation of \$917 per month.¹³

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁴ 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. Mr. B's child support has been \$258 per

⁸ Exh. 7 at pg. 1.

⁹ Exh. 9 at pg. 7.

¹⁰ Exh. 9 at pg. 8.

¹¹ CSSD's Submission to Record at pg. 1.

¹² *Id.*

¹³ Exh. 11.

¹⁴ AS 25.27.190(e).

month since CSSD issued a modification order in early 2012. Thus, a child support calculation of \$296.70 or more would be sufficient to warrant modification in this case.¹⁵

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of August 1, 2012.¹⁶ In a child support matter, the person who files the appeal, in this case, Mr. B, has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect.¹⁷

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," minus mandatory deductions such as taxes and Social Security. The rule also provides that the administrative law judge may adjust an obligor parent's support amount higher or lower from month to month if he or she has seasonal employment.¹⁸ However, the rule discourages this method unless it is appropriate for the custodian to bear the burden of the adjustment, and the custodian agrees with the variation.¹⁹

In this case, CSSD modified Mr. B's child support to \$857 per month, based on his weekly paystubs that were available at the time.²⁰ After the hearing, Mr. B submitted all of his paystubs for the year, which CSSD used to estimate his total annual income at \$69,744.76. This income figure yields a child support amount of \$917 per month.

Based on all of the evidence presented, Mr. B did not present evidence sufficient to establish that he is entitled to a seasonal adjustment in his monthly child support obligation at this time. His income is sufficient for him to make any monthly adjustments on his own. In other words, Mr. B earns enough income so that he should be able to save or set aside funds on a regular basis to meet his monthly support obligation even when there are seasonal reductions to his income. CSSD's calculation of his support obligation is correct, based on all the evidence presented, and it is a reasonable measure of Mr. B's ability to pay support.²¹

¹⁵ \$258 x 115% = \$296.70.

¹⁶ 15 AAC 125.321(d). In this case, the notice was issued on July 27, 2012. Exh. 3.

¹⁷ 15 AAC 05.030(h); 2 AAC 64.290(e).

¹⁸ Civil Rule 90.3(c)(5).

¹⁹ *Id.*

²⁰ Exh. 5 at pg. 8.

²¹ Ms. U claimed during the hearing that Mr. B and his girlfriend are living together, but even if that is true, it does not change his child support amount.

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. His year to date income has been determined and the child support amount recalculated to \$917 per month for one child. This figure is correct and should be adopted. Mr. B requested a seasonal adjustment under Civil Rule 90.3(c), but it was not granted.

V. Child Support Order

- Mr. B is liable for modified ongoing child support for D in the amount of \$917 per month, effective August 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated September 27, 2012, remain in full force and effect.

DATED this 19th day of December, 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 7th day of January, 2013.

By: *Signed* _____
 Signature
Kay L. Howard
 Name
Administrative Law Judge
 Title

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