

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

In The Matter of: )  
 )  
E S. P, SR. ) OAH No. 13-0301-CSS  
 ) CSSD No. 001156370  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case involves obligor E S. P, Sr.'s appeal of a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on February 12, 2013. The child in this case is A B (f/k/a A B, Jr.), age six. The custodian of record is D B.

Based on the evidence in the record, CSSD's Modified Administrative Child Support and Medical Support Order dated February 12, 2013, which sets Mr. P's ongoing child support obligation at \$266.00 per month effective January 1, 2013, is affirmed.

**II. Facts**

*A. Material Facts*

In 2007 Mr. P and Ms. B had a son, now named A B.<sup>1</sup> The parties separated about five to six months after A was born and currently live in different villages.<sup>2</sup> A lives with Ms. B.<sup>3</sup>

Mr. P has children from other relationships in addition to A.<sup>4</sup> However, the record does not include any specific information regarding these other children.

Since 2009, Mr. P has worked part time for seven different employers (the No Name Development Corp., the No Name School District, the No Name Community, the City of No Name, No Name Native Corp., No Name Power Utilities and No Name Native Corp.).<sup>5</sup> Information obtained by CSSD from the Alaska Department of Labor and Workforce Development (ADOL) indicates that Mr. P had gross wages of \$7,072.93 in 2009; \$10,008.15 in 2010; \$8,429.18 in 2011; and \$15,396.65 in 2012.<sup>6</sup>

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<sup>1</sup> D B hearing testimony. Ms. B testified at hearing that the child's name has been legally changed.  
<sup>2</sup> See case referral form as completed by CSSD.  
<sup>3</sup> D B hearing testimony.  
<sup>4</sup> D B hearing testimony.  
<sup>5</sup> Ex. 6, pp. 1 - 2.  
<sup>6</sup> Ex. 6, p.1.

In addition to Mr. P's ADOL data, CSSD obtained information from the Alaska Department of Fish and Game which indicates that, in 2012, Mr. P had gross earnings from commercial fishing of \$8,082.35.<sup>7</sup> Thus, Mr. P's actual gross earnings from his employment and commercial fishing totaled \$23,479.00 in 2012. CSSD calculated that Mr. P's primary custody child support amount, based on his 2012 gross income figure, is \$266.00 per month for one child.<sup>8</sup> This figure is effective for the month of January 2013 forward.<sup>9</sup>

*B. Relevant Procedural History*

Mr. P's child support was set at \$138.00 per month in May 2009.<sup>10</sup> On December 5, 2012 Ms. B requested modification of the 2009 child support order.<sup>11</sup> On December 13, 2012 CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>12</sup> On February 12, 2013 CSSD issued a Modified Administrative Child Support and Medical Support Order which modified Mr. P's child support to \$266.00 per month effective January 1, 2013.<sup>13</sup> On February 25, 2013 Mr. P appealed CSSD's Modified Administrative Child Support Order.<sup>14</sup> On his appeal form Mr. P stated in relevant part that his "income would not be able to cover [the] modification order."<sup>15</sup>

On March 11, 2013 the Office of Administrative Hearings (OAH) mailed hearing notices to the parties by certified mail to their last-known addresses.<sup>16</sup> As of this date, the postal service certified mail receipt form for Mr. P has not been returned to OAH.

The formal hearing was held on March 27, 2013. A call was placed to Mr. P at his only known telephone number, the one he had provided on his appeal form. Mr. P did not answer and the call went to voice mail. A message was left for Mr. P stating the reason for the call. Neither the CSSD representative nor Ms. B were aware of any other telephone numbers for Mr. P.

Because all notice requirements had been complied with, the hearing proceeded in Mr. P's absence as authorized by regulation. Ms. B participated in the hearing by telephone and testified on her own behalf. Child Support Specialist Erinn Brian participated by telephone and represented

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<sup>7</sup> Ex. 7, pp. 1 - 2.

<sup>8</sup> Ex. 4, p. 1. It could be argued that Mr. P's child support should be higher due to the fact that he receives fishing income from self-employment. However, without any evidence of his expenses, it is impossible to know just what his net fishing income would have been. *See* Civil Rule 90.3, Commentary III.B. Under these circumstances, his child support should be calculated from the income figures CSSD used. Also, Ms. B accepted the \$266.00 figure at the hearing.

<sup>9</sup> Ex. 4, p. 1.

<sup>10</sup> Ex. 1, p. 1.

<sup>11</sup> Ex. 2, p. 1.

<sup>12</sup> Ex. 3.

<sup>13</sup> Ex. 6.

<sup>14</sup> Ex. 5, p. 1.

<sup>15</sup> Ex. 5, p. 1.

<sup>16</sup> Mr. P's hearing notice was sent to the same address he had provided when he signed his appeal form.

CSSD. The record closed following the hearing on March 27, 2013. Mr. P did not contact the OAH to request that his hearing be rescheduled.

### **III. Discussion**

#### *A. Mr. P Received Legally Sufficient Notice of Hearing*

The notice requirements for formal child support hearings are set forth in two separate regulations. The first regulation, 15 AAC 05.030(g) requires that the hearing office "give reasonable notice to the parties." As long as "reasonable notice" has been given, if the person who requested the hearing fails to appear for or participate in the hearing, the administrative law judge may issue a decision without taking evidence from that person unless the person, within 10 days after the date scheduled for hearing, shows reasonable cause for his or her failure to appear.<sup>17</sup>

The second regulation, 15 AAC 05.010(c), requires that the person requesting a formal child support hearing provide a current mailing address to the department with the request for appeal. The regulation further states that if a document is mailed to the party by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.

In this case, Mr. P's hearing notice was sent to him, via certified mail, at the same address Mr. P had recently provided when he filed his hearing request. Accordingly, the notice provided to Mr. P complied with the notice requirements of 15 AAC 05.010(c) and 15 AAC 05.030(g).

In summary, the relevant regulations do not require confirmation of the obligor's actual receipt of the hearing notice, and the specific requirements of the notice regulations were complied with in this case. Accordingly, Mr. P received legally sufficient notice of hearing. This decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

#### *B. The Legal Basis of Mr. P's Child Support Obligation*

A parent is obligated both by statute and at common law to support his or her children.<sup>18</sup> Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>19</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.

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<sup>17</sup> 15 AAC 05.030(j).

<sup>18</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); A.S. 25.20.030.

<sup>19</sup> AS 25.27.190(e).

Under Civil Rule 90.3(a)(1), where (as here) the custodial parent has primary physical custody of the child, the first step in calculating child support is to determine the non-custodial parent's "total income from all sources." CSSD properly used Mr. P's actual income figures for 2012 in determining his child support obligation.

The next step in calculating child support is to multiply the non-custodial parent's income by the specific percentage specified in Civil Rule 90.3. In cases like this one involving payment of support for a single child, and where (as here) the custodial parent has primary custody of that child, Civil Rule 90.3(a)(2)(A) sets the monthly child support payment at 20% of the non-custodial parent's adjusted income. Based on Mr. P's actual 2012 earnings information, CSSD determined that Mr. P's 2012 child support obligation for one child (A), given Ms. B's primary custody of the child, is \$266.00 per month beginning January 1, 2013.<sup>20</sup> Ms. B agreed at hearing that CSSD's figure is appropriate, and Mr. P provided no evidence that CSSD's figure is incorrect.

*C. Mr. P did not Satisfy his Burden of Proof*

Because Mr. P did not participate in his hearing, the administrative law judge (ALJ) was forced to try to determine Mr. P's objections to CSSD's order of February 12, 2013 based solely on Mr. P's appeal / formal hearing request form. In that document, Mr. P did not contest either the income information on which CSSD based its child support calculations, or the correctness of CSSD's calculations themselves.<sup>21</sup> Rather, Mr. P simply asserted that the modified child support obligation is excessive given his limited income. This appears to constitute a request, based on Civil Rule 90.3(c), to reduce the amount of child support Mr. P would normally pay, for good cause, based on exceptional circumstances.

The person who appeals a CSSD child support determination (in this case, Mr. P) has the burden of proving, by a preponderance of the evidence, that CSSD's support order is incorrect.<sup>22</sup> To qualify for payment of reduced child support under Civil Rule 90.3(c), the obligor or non-custodial parent (here Mr. P) must prove, by clear and convincing evidence, that manifest injustice will result if the child support award which would otherwise be payable under Civil Rule 90.3(a-b) is not reduced. However, Mr. P did not testify at his hearing or provide documentary evidence to support his request for a variance in his child support obligation. Mr. P thus failed to satisfy his burden of proving, by clear and convincing evidence, that manifest injustice will result if the child

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<sup>20</sup> Ex. 4, p. 1.

<sup>21</sup> Ex. 5, p. 1.

<sup>22</sup> 15 AAC 05.030(h).

support award calculated under Civil Rule 90.3 is not reduced. Accordingly, Mr. P is not entitled to a variance under Civil Rule 90.3(c).

**IV. Conclusion**

CSSD calculated Mr. P's modified child support at \$266.00 per month based on his actual income in 2012. Mr. P did not appear at the hearing to present any evidence or argument in support of his appeal. Therefore, the Modified Administrative Child Support and Medical Support Order CSSD issued should be affirmed.

**V. Child Support Order**

CSSD's Modified Administrative Child Support and Medical Support Order dated February 12, 2013 is affirmed.

DATED this 9th day of April, 2013.

By: Signed \_\_\_\_\_  
Jay Durych  
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 26<sup>th</sup> day of April, 2013.

By: Signed  
Signature  
Jay D. Durych  
Name  
Administrative Law Judge  
Title

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