

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

In the matter of:)
)
 K B. X) OAH No. 14-0014-CSS
) CSSD No. 001134802
_____)

DECISION AND ORDER

I. Introduction

Custodian A L. L challenges the Modified Administrative Child Support and Medical Support Order issued December 3, 2013. This order reduced obligor K B. X's monthly child support obligation from \$539 per month to \$50 per month effective November 1, 2013. The oblige child is N.

There have been several hearings in this matter. It has been challenging to obtain the information necessary to resolve Ms. L's appeal or to have both parents participate at any one of the hearings.

Ms. L has established by a preponderance of the evidence that the December 3, 2013 Modified Administrative Child Support and Medical Support Order failed to account for the Children's Insurance Benefits (CIB) paid by social security. Accordingly, the December 2013 order should be amended to reflect that CIB payments received by N are income to Mr. X for purposes of calculating child support, and that he receives a corresponding child support credit.

II. Facts

Ms. L and Mr. X have one child, N. Mr. X filed a request for modification on October 15, 2013.¹ The order he sought to modify is dated August 9, 2012, setting his support at \$539 per month for one child.² The division granted modification after determining that Mr. X is disabled and without income other than the Permanent Fund Dividend, so it reduced Mr. X's monthly support obligation to the minimum permitted by law, \$50.³

Ms. L appealed, contending that Mr. X had received a large amount of money and was now receiving social security disability payments.⁴ A hearing was held on January 22, 2014. All parties participated. At this hearing, Ms. L was informed about N's right to receive children's insurance benefits (CIB) as a dependent of a social security disability recipient. The

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 4, p. 7.
⁴ Exhibit 5.

hearing was continued to provide Ms. L with an opportunity to go to social security and apply for CIB benefits.

A supplemental hearing was held on March 17, 2014. Mr. X participated through counsel; child support specialist Russell Crisp represented CSSD; and Ms. L did not participate. At this hearing, Mr. X presented information regarding his social security benefits. As a result of this new information, a proposed child support calculation was provided to the parties resulting in a \$197 per month child support payment.

The final hearing took place on May 27, 2014. Mr. X participated through counsel; child support specialist Russell Crisp represented CSSD; and Ms. L participated by telephone. At the May 27, 2014 hearing, Ms. L testified that N was now receiving \$285 per month in CIB. She did not indicate when payments commenced or whether N had or would be receiving a lump sum payment for CIB owed but not paid.

III. Discussion

It is undisputed that Mr. X is receiving monthly Social Security Disability benefits and that his child is eligible for CIB benefits. CIB payments are first added to Mr. X's income when calculating child support and then credited against his monthly support obligation.⁵ This means that Mr. X's child support obligation is effectively paid by social security.

All involved in the proceedings agree that this is the proper way to calculate child support when CIB is involved. The calculation discussed at hearing resulted in a \$197 monthly child support obligation, but it did not include CIB as income to Mr. X. When CIB in the amount of \$285 per month is included as income, Mr. X's monthly child support obligation for one child is \$254.⁶ Because he receives a credit for the amount of CIB received by N, there is no child support owing under either calculation.

However, it is important that the amount of support ordered be legally correct. Therefore, Mr. X's Modified Administrative Child Support and Medical Support Order should include CIB as income to Mr. X. When included, his monthly child support obligation for one child is \$254 per month.⁷ This is a material change (an increase or decrease in excess of 15%) from the \$197 per month excluding CIB payments. The unique facts of this matter support the

⁵ Commentary Alaska Rule of Civil Procedure 90.3 (III)(A); *Pacana v. State*, 941 P.2d 1263 (Alaska 1997).

⁶ The child support calculation discussed at hearing is that presented at Attachment A. The correct calculation is presented at Attachment B. Although the methodology in Attachment B has been discussed throughout the multiple hearings in this matter, the resultant child support was not presented to the parties. If a party disagrees with Attachment B, they may utilize the Proposal for Action process.

⁷ Commentary Alaska Rule of Civil Procedure 90.3 (III)(A); *Pacana v. State*, 941 P.2d 1263 (Alaska 1997); Attachment B.

division automatically adjusting (modifying) Mr. X's support once the effective date of CIB is established, because Mr. X is eligible for a CIB credit only if CIB was received by N.

The effective date of the CIB is not established in the record. However, the facts establish that it is more likely than not that N did not receive CIB prior to January 22, 2014, because this is the date Ms. L was informed that she should apply for N's CIB benefits. The facts also establish that CIB benefits were received as of the May 27, 2014 hearing. Therefore, CSSD should obtain information that would allow it to determine the effective date of the CIB offset credit. Also CSSD should determine whether N received a lump sum payment for unpaid CIB and credit the amount as appropriate.

IV. Conclusion

Mr. X's monthly child support obligation for one child is \$197 per month effective November 1, 2013. His child support should be automatically adjusted to reflect CIB payments effective the first month of CIB payments, but no earlier than November 1, 2013. The adjusted amount should be calculated as proposed at Attachment B to this order.

V. Child Support Order

- Mr. X is liable for child support for one child in the amount of \$197 per month effective November 1, 2013 up through the date N first received children's insurance benefits (CIB).

- N is receiving \$285 per month in CIB as a result of Mr. X's social security. Mr. X is eligible for a credit against his child support obligation for monthly or lump sum CIB payments received by N.

- CSSD is authorized to apply the CIB calculation resulting in \$254 per month and the corresponding \$285 credit effective the first month of CIB payments, but no earlier than November 1, 2013.

- All other provisions of the December 3, 2013 Modified Administrative Child Support and Medical Support Order remain in effect.

DATED this 16th day of June, 2014.

By: Signed
Rebecca L. Pauli
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 July, 2014.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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