

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

In the Matter of	)	
	)	
U R. B, JR.	)	OAH No. 15-0113-CSS
_____	)	Agency No. 001195593

**DECISION AND ORDER**

**I. Introduction**

The custodian, M H. C, filed an appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. B’s case on January 23, 2015. The obligee child is U, 5 years old.

The formal hearing was held on March 5, 2015. Both parties participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, Mr. B’s child support is modified to \$133 per month, effective January 1, 2015 and ongoing.

**II. Facts**

*A. Procedural History*

Mr. B’s child support for U was set at \$314 per month in January 2014.<sup>1</sup> On November 13, 2014, Mr. B initiated a modification review.<sup>2</sup> On December 11, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. B submitted a letter requesting a \$50 per month order due to being incarcerated.<sup>4</sup> On January 23, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order that reduced Mr. B’s child support to \$50 per month, effective January 1, 2015.<sup>5</sup> Ms. C filed an appeal and formal hearing request on February 3, 2015.<sup>6</sup>

*B. Material Facts<sup>7</sup>*

Mr. B and Ms. C are the parents of U, who lives full-time with his mother. Ms. C also has another child in the home besides U.

Mr. B is currently incarcerated. He was jailed on September 22, 2014, and expects to be released in February 2017.<sup>8</sup> He hopes to go to a halfway house within the next four months,

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 2.

<sup>3</sup> Exh. 3.

<sup>4</sup> Exh. 4.

<sup>5</sup> Exhs. 5-6.

<sup>6</sup> Exh. 7.

<sup>7</sup> The facts are taken from the parties’ hearing testimony, unless otherwise stated.

which may enable him to seek and find employment. When he is released, he plans to live with his sister. Mr. B stated that he also has medical problems consisting of liver cancer and arthritis, but he did not present any documentary evidence of his condition.

Mr. B is a member, and owns 150 shares each, of two Native corporations, Corporation A, and Corporation B. Ms. C submitted the latest information regarding payments of dividends from the corporations.<sup>9</sup> In 2014, Corporation A paid \$12.50 per share on four occasions during the year.<sup>10</sup> This equals a payout of \$7,500 for Mr. B.<sup>11</sup> Also in 2014, Corporation B paid an annual dividend of \$8.15 per share, which equals \$1,222.50 for the obligor.<sup>12</sup> Adding the two amounts together results in total income from Native dividends for Mr. B of \$8,722.50 in 2014. Inserting this figure into CSSD's child support calculator results in a child support amount of \$145 per month.<sup>13</sup>

In 2015, Corporation A intends to distribute a total of \$45 per share to its shareholders.<sup>14</sup> This equals a payout of \$6,750 for Mr. B.<sup>15</sup> There is no evidence in the record that indicates Corporation B has updated its dividend information, so it appears that corporation's dividend will remain at \$8.15 per share in 2015, which equals \$1,222.50 for Mr. B.<sup>16</sup> Adding the total amounts from each corporation results in total income from Native dividends in 2015 of \$7,972.50.<sup>17</sup> Inserting this figure into CSSD's child support calculator results in a child support amount of \$133 per month for the year.<sup>18</sup>

### III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>19</sup> If the newly calculated support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has

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<sup>8</sup> CSSD confirmed the obligor's expected 2017 release date by consulting the Alaska Department of Corrections database. *See* Exh. 9.

<sup>9</sup> Exh.

<sup>10</sup> Exh. 10 at pg. 3.

<sup>11</sup>  $\$12.50 \times 150 = \$1,875 \times 4 \text{ payments} = \$7,500.$

<sup>12</sup>  $\$8.15 \times 150 = \$1,222.50.$

<sup>13</sup> Exh. 11.

<sup>14</sup> Exh. 10 at pg. 3.

<sup>15</sup>  $\$45 \times 150 = \$6,750.$

<sup>16</sup>  $\$8.15 \times 150 = \$1,222.50.$

<sup>17</sup>  $\$6,750 + \$1,222.50 = \$7,972.50.$

<sup>18</sup> Exh. 12.

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

been established and the order may be modified. In early 2014, CSSD set Mr. B's child support at \$314 per month for one child.<sup>20</sup> A new child support calculation at least \$47.10 higher or lower thus would be sufficient to modify his child support obligation.<sup>21</sup> For the modification, CSSD set the obligor's modified support at \$50 per month for one child, which meets the presumption that a "material change in circumstances" has been shown.

A modification is effective beginning the first of the month after the parties are served with notice that a modification review has been requested.<sup>22</sup> CSSD issued the notice in Mr. B's case on December 11, 2014, so any modification of his child support obligation would be effective as of January 1, 2015.<sup>23</sup> As the person who filed the appeal, Ms. C has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect.<sup>24</sup>

Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. CSSD modified Mr. B's child support to \$50 per month, based on his incarceration. A child support order of \$50 per month is the minimum amount allowed under Alaska law.<sup>25</sup> This is the typical amount that is assessed against indigent parents, and it has been upheld by the Alaska Supreme Court for incarcerated individuals who have a child support obligation.<sup>26</sup> However, even though he is incarcerated, Mr. B is not indigent. As a shareholder in two Native corporations, he receives dividend distributions totaling several thousand dollars every year. Dividends are considered income for child support purposes, and should be the basis upon which Mr. B's child support obligation is determined.<sup>27</sup> CSSD prepared two calculations after the hearing, one in the amount of \$145 per month, based on Mr. B's 2014 income, and one for \$133 per month, based on his expected dividend income in 2015. Since the modification is effective on January 1, 2015, the latter figure of \$133 per month should be used.

#### **IV. Conclusion**

Ms. C met her burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 23, 2015 was incorrect.

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<sup>20</sup> Exh. 1 at pg. 1.

<sup>21</sup>  $\$314 \times 15\% = \$47.10$ .

<sup>22</sup> 15 AAC 125.321(d).

<sup>23</sup> Exh. 3.

<sup>24</sup> 15 AAC 05.030(h); *see also* 2 AAC 64.290(e).

<sup>25</sup> Civil Rule 90.3(c)(1)(B).

<sup>26</sup> *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

<sup>27</sup> Civil Rule 90.3, Commentary III.6.

Mr. B is incarcerated, but he also receives income in the form of Native dividends, which should be included in his income. CSSD correctly calculated his child support at \$133 per month, based on his expected annual income in 2015. This calculation is correct and should be adopted, effective January 1, 2015.

**V. Child Support Order**

- Mr. B's child support for U is modified to \$133 per month, effective January 1, 2015;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 23, 2015 remain in full force and effect.

Dated: June 1, 2015

*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 within 30 days after the date of this decision.

DATED this 17th day of June, 2015.

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

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