

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

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|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| D M. B |) | OAH No. 15-1183-CSS |
| <hr style="width:40%; margin-left:0"/> |) | Agency No. 001131312 |

DECISION AND ORDER

I. Introduction

The Child Support Services Division issued an order increasing D M. B's monthly child support obligation for his son, K, from \$50 per month to \$485 per month. Mr. B appeals, asserting he has primary physical custody of K and so should not be required to pay child support. This decision directs that the parties' July 2015 Modified Administrative Child Support and Medical Support Order be suspended, effective as of June 1, 2015.

II. Facts

D B and W Q are the parents of K, age 11. CSSD has had an open child support case for K since 2004. From December 2004 through June 2015, the parties' child support case was governed by an October 2004 Administrative Child Support and Medical Support Order that set Mr. B' monthly support obligation for K at \$50 per month.¹ Neither parent ever requested modification of that Order.

In May 2015, CSSD initiated a modification review of the parties' child support order. On May 5, 2015, CSSD served both parents with a Notice of Petition for Modification of Administrative Support Order.² However, neither parent provided CSSD with income information, or any other information, in response to this notice.

In July 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order increasing Mr. B's monthly support obligation for K from \$50 per month to \$485.00 per month, effective June 1, 2015.³

Mr. B appealed, indicating that K actually lives with him, and so he should not be paying child support at all.⁴ In support of his appeal, Mr. B submitted school records listing

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhibit 4 and CSSD case presentation at hearing.

his home address as K's address.⁵ Mr. B also submitted three sworn affidavits from long-time friends, each of which attested that Mr. B had been K's sole caretaker for more than two years.

A hearing was held on September 22, 2015. Mr. B participated telephonically and testified. Child Support Specialist Joseph West represented CSSD. Ms. Q did not attend the hearing.⁶

At the hearing, Mr. B testified that K has lived with him for large portions of K's life. For at least the last two years, K has lived with Mr. B, his girlfriend, and their son. Mr. B described these living arrangements and identified numerous witnesses with knowledge of this situation. Mr. B also explained that he had not previously attempted to adjust or stop his monthly child support payments because the payment was only fifty dollars per month, but the significantly larger support obligation in the July 2015 Order motivated him to act.⁷

In its case presentation, CSSD expressed the position that the evidence of Mr. B's physical custody of K supports suspension of Mr. B's ongoing child support obligation under the July 2015 Order.

The hearing record closed at the end of the hearing, and this decision follows.

III. Discussion

As the person who filed the appeal, Mr. B has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child and Medical Support Order support order is incorrect.⁸

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." CSSD has calculated Mr. B's modified support obligation at \$485.00 per month, and Mr. B does not contest this figure. Rather, he claims that he should not pay child support to Ms. Q because K is in fact living with him.

Mr. B proved by a preponderance of the evidence that K lives with him and his family, not with Ms. Q. CSSD regulation 15 AAC 125.870(a)(2) directs the agency to suspend a

⁵ Exhibit 4.

⁶ OAH received a signed postal service "green card" certifying delivery to Ms. Q of the Notice of Hearing. Ms. Q did not appear for the hearing. The Administrative Law Judge then attempted to reach her via telephone, but both of the telephone numbers of record were out of service.

⁷ Mr. B also indicated that, for the same reason, he is not seeking a retroactive suspension of the earlier support order, but only a suspension of the June 2015 modified support order.

⁸ 15 AAC 05.030(h).

parent's support obligation during any period of time that "the parent identified as the obligor has primary physical custody of the child."⁹ Because Mr. B has primary physical custody of K, the accrual of ongoing support must be suspended.

IV. Conclusion

Mr. B does not dispute the accuracy of the monthly child support obligation as calculated in the Modified Administrative Support and Medical Support Order. However, he met his burden of proving that the accrual of ongoing support under that Order should be suspended.

V. Child Support Order

1. D M. B is liable for child support for K in the amount of \$485.00 per month, effective June 1, 2015.
2. Mr. B's ongoing support for K is SUSPENDED from June 1, 2015 forward, for as long as Mr. B has physical custody of K.
3. All other provisions of the Modified Administrative Child Support and Medical Support Order dated July 1, 2015 remain in full force and effect.

Dated: September 24, 2015

Signed

Cheryl Mandala
Administrative Law Judge

⁹ Ms. Q was provided notice of Mr. B's position on custody and request to suspend support more than two weeks in advance of the hearing, and has been provided further opportunity to raise objections pursuant to 2 AAC 64.210. *Cf.* 15 AAC 125.870(a)(g).

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 8th day of October, 2015.

By: Signed
Signature
Cheryl Mandala
Name
Administrative Law Judge
Title

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