

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

In the Matter of	)	
	)	
D B	)	OAH No. 15-1253-CSS
<hr style="width:45%; margin-left:0"/>	)	Agency No. 001175848

**DECISION AND ORDER**

**I. Introduction**

This is obligor D B’s appeal of the Division’s order modifying his ongoing monthly child support obligation for his child, A.

A formal hearing was held on October 7, 2015. Mr. B participated in the hearing. U N. H, the custodial parent, did not participate. Delinda Cain, Child Support Services Specialist, represented the Child Support Services Division (Division). The hearing was audio-recorded. The record closed on October 7, 2015.

Because Mr. B did not show a material change since his ongoing monthly child support obligation for A was last set at \$418, his child support order should not be modified. The circumstance surrounding Mr. B’s earnings history does not show that there is a material change in his annual income and earning capacity.

**II. Facts**

Mr. B’s ongoing monthly child support obligation was set at \$418 per month in an Amended Administrative Child and Medical Support Order dated January 26, 2012.<sup>1</sup> The Division reviewed this child support order at Mr. B’s request and issued a Notice of Petition for Modification requesting each parent provide income information.<sup>2</sup>

Mr. B did not provide the income information requested by the Division.<sup>3</sup>

The Division issued a Modified Administrative Child Support and Medical Support Order on August 20, 2015.<sup>4</sup> In this order, the Division set Mr. B’s modified ongoing child support at \$538 per month effective August 1, 2015. The Division based his child support obligation on his first and second quarter earnings as reported to the Alaska Department of Labor

---

<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Division’s Pre-Hearing Brief at page 1.  
<sup>4</sup> Exhibit 3.

and Workforce Development. His earnings for these two quarters total \$26,948. This estimate was calculated by extrapolating full-time, year-round earnings from employer provided information.<sup>5</sup> The Division annualized this amount and included the 2014 Alaska Permanent Fund Dividend. This resulted in an estimated annual gross income totaling \$55,781. When calculating support, the Division included as a deduction, a deduction for older children in the home.

Mr. B requested a formal hearing and provided current paystubs. Mr. B has decided to quit his full-time job and return to school full time. He is able to do this because his wife has received a \$15,000 settlement and will be returning to work while he remains in school.<sup>6</sup>

At the hearing, Mr. B explained that his earnings, while correct, represented his earnings from working three jobs. By working two extra jobs, he was able to pay all arrears owing and provide for his current family. He contends they are not representative of what he will be earning as a full-time college student.

Until recently, Mr. B was employed as an office supervisor at No Name earning \$43,000 per year. He would also teach classes from time to time. He would like to become a full time instructor at the college and support his family in that manner. His long term goal is to become a director at the school. To be assured a regular teaching schedule, Mr. B will need a Bachelor's degree; and to become a director, he will need a Master's degree.

He is pursuing a degree in business administration. Mr. B testified that he will be eligible to teach more classes and earn \$23 per hour. If he is eventually hired as a director, he believes he could earn \$53,000 per year.

Mr. B's 2012 ongoing child support order for \$418 per month for one child was based on an annual income of about \$41,177.56 and included a deduction for his older children.

### **III. Discussion**

Alaska Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.<sup>7</sup> The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15%.<sup>8</sup>

---

<sup>5</sup> Exhibit 3.

<sup>6</sup> B Testimony.

<sup>7</sup> Alaska Civil Rule 90.3(h)(1).

<sup>8</sup> Alaska Civil Rule 90.3, Commentary X.

The evidence in the record showed that there has not been a material change in circumstances that would justify a modification since his child support was set at \$418 per month. Although there is evidence that he earned significantly more in the first two quarters of 2015 than the amount used to calculate his current obligation of \$418, Mr. B's current monthly earnings, if annualized, would result in an obligation that was much lower than \$418. It is difficult at this time to estimate what Mr. B's annual income will be because his plan is speculative and unrealistic. His wife earns \$15 per hour and will not return to work until next spring. The family receives public assistance (food stamps and housing). It is expected that the settlement upon which the family is surviving will run out early next year. At that time, Mr. B anticipates taking out student loans. He attends a private university. He is capable of working and will likely make an amount close to what he was earning in his salaried position.

At this time, Mr. B's current annual income would result in a monthly child support amount that is less than he was paying before the latest modification action, but there has not been a material change in circumstances since his child support was set at \$418 per month. At this time, Mr. B's earning capacity is difficult to estimate. Given his job skills, his recent annual earnings and his plan to return to his prior employer to work while attending school, he does not yet have enough recent employment history to be able to determine if there has been a material change in circumstances since his child support was set at \$418 per month.

As discussed at the hearing, the parties may wish to request another modification review. Mr. B's efforts to obtain further education are laudable. At the same time, his decision to quit his job was a choice.

Mr. B's plan to return to school full time is of questionable benefit to family finances. It calls for him to forgo over \$80,000 in earnings over the next two years. Mr. B testified that he would be taking out student loans, so he will be incurring debt while his family lives on his wife's annual earnings in the amount of \$30,000. In the end, he hopes to be eligible to compete for a position that pays the same as, or less than, what he has been earning.

Child support may be based on the potential income of a person who is voluntarily and unreasonably unemployed or underemployed.<sup>9</sup> A noncustodial parent who voluntarily reduces his or her income does not automatically receive a corresponding reduction in his or her child

---

<sup>9</sup> Civil Rule 90.3 Commentary, Part III-C.

support obligation.<sup>10</sup> Further review could result in a finding that it is appropriate to impute additional income to Mr. B if his failure to return to his earnings prior to attending school makes him unreasonably underemployed.

#### **IV. Conclusion**

There has not been a material change since Mr. B's ongoing monthly child support obligation for A was last set at \$418. Mr. B's child support order should not be modified. The child support amounts in this order were calculated using the primary custody formula in Civil Rule 90.3(a).

#### **V. CHILD SUPPORT ORDER**

1. The Division's Modified Administrative Child Support and Medical Support Order dated August 20, 2015 is overturned.
2. Mr. B's ongoing child support will remain at \$418 per month in accordance with the Modified Administrative Child and Medical Support Order dated January 26, 2012, which remains in effect.

Dated: October 12, 2015

*Signed* \_\_\_\_\_  
Rebecca L. Pauli  
Administrative Law Judge

---

<sup>10</sup> *Pattee vs. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

**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 27<sup>th</sup> day of October, 2015.

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

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