

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

In the Matter of)
J M. B) OAH No. 05-0671-CSS
_____) CSSD No. 001113682

CHILD SUPPORT DECISION & ORDER

I. Introduction

The obligor, J M. B, filed a request for formal hearing on the Child Support Services Division's August 23, 2005 denial of his request for a modification his support obligation. The division filed a Motion for Summary Adjudication. A hearing on the motion was held on September 26, 2005. Mr. B, S M. B, the custodian, and Andrew Rawls, the division's representative, participated by telephone. The parties agreed that the existing \$50 per month order is appropriate because Mr. B was incarcerated at the time of the hearing. The division's motion, therefore, is granted.

II. Facts

In August 2004, the division set Mr. B' support at \$503 per month for two children.¹ On May 23, 2005, the division received a request from Mr. B that his support obligation be modified.² As a result, the order was modified, reducing the support amount to \$50 per month.³ Mr. B subsequently filed another request for modification.⁴ The division denied that request on August 23, 2005, stating that "[i]t was determined there was not a significant change in circumstance to meet criteria for modification."⁵

On August 29, 2005, the division received a request for formal hearing on that denial from Mr. B.⁶ The request simply asked that the division keep Mr. B' monthly child support payments at \$50 because he was incarcerated.⁷ The division filed a motion, asking that its decision to deny Mr. B a further modification be affirmed and that the support amount be left at \$50 per month.⁸ A hearing was held to allow Mr. B and Ms. B to respond to the division's motion.

¹ Recording of the Hearing.

² Division's Exhibit 1.

³ Recording of Hearing.

⁴ Recording of Hearing.

⁵ Division's Exhibit 3.

⁶ Division's Exhibit 4.

⁷ See Division's Exhibit 4 (appeal form).

⁸ See September 2, 2005 Motion for Summary Adjudication (September 2, 2005)

During the hearing, Mr. B testified that he was then still incarcerated with an expected release date of October 6, 2005.⁹ He acknowledged that his support obligation would need to increase after his release but was concerned that an immediate increase to the \$503 amount that applied prior to the May 2005 modification would be too much for him to handle. He testified that he did not have a job lined up but hoped to get into an apprenticeship program upon release from jail.

Ms. B agreed that while Mr. B remained incarcerated, \$50 per month was the appropriate amount. She emphasized that the children, however, deserve more from their father than \$25 each. She also indicated that she understands that she has the right to request a modification of the support order when Mr. B' circumstances improve.

III. Discussion

In its motion, the division took the position that this appeal could be decided on summary adjudication because there is no dispute about Mr. B being incarcerated and that his support obligation, therefore, should remain \$50 per month. If no material facts are disputed, the appeal can be decided on summary adjudication.¹⁰

The amount a parent must pay for child support is set based on the parent's income.¹¹ Even if the parent has no current income, however, the lowest support amount the division can set in an order is \$50 per month.¹² The division could increase his support obligation through a modification if Mr. B' income justified that, but the division could not reduce the support amount below the \$50 per month minimum. For this reason, the division's denial of Mr. B' request for a further modification of the \$50 order was correct.

IV. Conclusion

The law does not allow Mr. B' support obligation to be set lower than \$50 per month. At the hearing, the parties agreed that the support amount should not be increased while Mr. B was still incarcerated. The division's motion, therefore, is granted and Mr. B' support obligation will remain set at \$50 per month unless and until it is modified, which could happen after his release from jail.

⁹ Recording of Hearing. In this decision, unless otherwise indicated, the fact testimony and other statements attributed to the parties are from the September 26, 2005 hearing.

¹⁰ See *Smith v. Dep't of Revenue*, 790 P.2d 1352, 1353 (Alaska 1990) (explaining that the right to a hearing does not require development of facts in an evidentiary hearing when no factual dispute exists).

¹¹ See Civil Rule 90.3(a).

¹² Civil Rule 90.3(c)(3).

V. Order

It is ordered that the division’s denial of Mr. B’ request for modification is affirmed and that Mr. B’ monthly support obligation remains at \$50. Nothing in the order prevents any party, including Mr. B or Ms. B, from requesting a modification when Mr. B’ circumstances have changed.

DATED this 14th day of October, 2005.

By: Signed _____
Terry L. Thurbon
Chief 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.

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 3rd day of November, 2005.

By: Signed _____
Signature
Terry L. Thurbon _____
Name
Chief Administrative Law Judge _____
Title

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