

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

IN THE MATTER OF:)
)
J. B. F.)
)
) OAH No. 06-0807-CSS
) CSSD Case No. 001129740
_____)

DECISION AND ORDER

I. Introduction

This case concerns the obligation of J. B. F. for the support of J. T. (DOB 00/00/04). The custodian of record is R. O.-W..

On June 18, 2004 the Child Support Services Division issued an administrative child support order in the amount of \$292 per month. On August 3, 2006, Ms. O.-W. requested modification of the support order. On November 16, 2006, the division issued a modified support order in the amount of \$425 per month, effective September 1, 2006.

Mr. F. appealed and requested a formal hearing. The matter was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on February 27, 2007.¹ Mr. F. participated. Ms. O.-W. was not available at her telephone number of record. Andrew Rawls represented the division.

Based on the preponderance of the evidence in the record and the testimony at the hearing, modified child support order is set at \$50 per month through June 30, 2007, and \$425 per month thereafter.

II. Facts

J. F. was a full-time employee of P. S. Company in Fairbanks from February 16, 2005, through September 7, 2006. His last position was as the yard manager, with a salary of about \$52,000 per year.

Mr. F. lost his job on September 8, 2006. Shortly thereafter, Mr. F. was arrested on a charge of felony driving while intoxicated. On September 25, 2006, Mr. F. was released on bail, on the condition that he remain in contact with his father as third party

¹ See AS 25.27.190, 15 AAC 05.030, 15 AAC 125.118(f).

custodian or at his father's residence 24 hours a day, and that he not drive any motorized vehicle. As a result of the conditions of his release, Mr. F. was unable to work. For about two months, November and December, while Mr. F. was unable to work or drive, J. moved up from his mother's residence in Anchorage and lived with Mr. F..

On December 22, 2006, Mr. F. was sentenced. He was again released to his father's custody, but was allowed to leave the residence with ankle monitoring. His sentence will expire in June, 2007. Because of prior convictions, Mr. F. will not be able to regain his driver's license for ten years. Because he is unable to drive, and the nearest bus stop is two miles away, Mr. F.'s ability to find work was limited. He found a job at a pizza shop up the road from his father's residence. Mr. F. walks to work and earns \$8.50 per hour, with varying hours.

Mr. F. has a good work history in retail construction supply. Prior to his job with P. S., he was earning about \$14 per hour in that capacity. When his sentence expires, Mr. F. anticipates that he will be able to find work at the same or better wages in a relatively short time, either in Fairbanks or in Anchorage.

II. Discussion

The annual child support payment for one child in the absence of shared custody is 20% of the adjusted annual income.² When the child support obligation changes by an amount greater than 15% of the existing order, a material change of circumstances is presumed and the existing order may be modified.³

The division modified Mr. F.'s support order based on his earnings prior to the date that he lost his job. However, within a week of the effective date of the modification, Mr. F. lost his job and was jailed on a felony drunk driving charge. At the hearing Mr. Rawls reviewed Mr. F.'s actual earnings as reported to the Department of Labor. Based on his actual earnings, and in light of the facts that Mr. F. was unable to work for a substantial period of time and his son lived with him for two months, the division recommended a minimum order from the effective date of modification until after Mr. F. is able to return to work without restrictions. Thereafter, it recommended setting child support based on his prior earnings of about \$14 per hour.

² Civil Rule 90.3(a)(2)(A); 15 AAC 125.010, -.070(a).

³ Civil Rule 90.3(h)(1).

The division's recommendation for a minimum order reflects Mr. F.'s actual earning during the period since his arrest. Because it is uncertain that Mr. F. will immediately return to the relatively high salary he earned at P. S., Mr. F.'s ongoing support obligation after his sentence ends should be based on his prior hour wage of \$14. At that wage, Mr. F.'s annual income would be approximately \$29,120 (\$14 x 2080), which is close to the amount the division used in calculating his support obligation at the time of the modification. The \$425 monthly support amount previously calculated by the division is therefore appropriate effective after Mr. F.'s sentence expires.

IV. Conclusion

There has been a material change of circumstances since the prior support order was issued, and modification is therefore appropriate. Because Mr. F. was unable to work until February, 2007, a minimum order is appropriate until the end of February, 2007. His ongoing support obligation from the time he was able to work should be based on his current earning capacity.

CHILD SUPPORT ORDER

1. Mr. F.'s modified ongoing support order is \$50 per month effective September 1, 2006, through June 30, 2007, and \$425 per month effective July 1, 2007.

DATED: March 30, 2007.

Signed

Andrew M. Hemenway
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of April, 2007.

By: *Signed* _____
Andrew M. Hemenway
Administrative Law Judge

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