

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

IN THE MATTER OF)	OAH No. 06-0808-CSS
A. B.)	CSSD No. 001142954
)	
_____)	

DECISION AND ORDER

I. Introduction

A formal hearing was held to consider the child support obligation of A. B. (Obligor) for the support of his children, A. and C., (Obligees).¹ Mr. B. appeared by telephone. The custodial parent, H. J., also participated. She was represented by Kim Hackman in the prosecuting attorneys' office in the county where Ms. J. lives. A. Rawls, Child Support Services Specialist, represented the Child Support Services Division (CSSD). The hearing was audio-recorded.

This case is Mr. B.'s appeal of CSSD's establishment of an administrative child support order for A. and C. Having reviewed the record in this case and after due deliberation, I concluded that it is necessary to reduce Mr. B.'s child support obligation to the minimum, \$50 per month, in order to prevent injustice.

II. Facts

A. History

Ms. J. requested the child support services in the state she lives in. That state filed a Uniform Interstate Family Support Act petition requesting that CSSD establish and collect child support for A. and C. beginning in the month of March 2006. Paternity of C. is in dispute. Mr. B. is named as the children's father on their birth certificates. Mr. B.'s paternity of C. was established through an acknowledgement of paternity that Mr. B. signed on May 6, 2001.²

The Division issued an Administrative Child and Medical Support Order on July 14,

¹ The hearing was held under Alaska Statute 25.27.170.

² Ex. 13.

2006.³ Mr. B. requested an administrative review. The Division issued an Amended Administrative Child and Medical Support Order on October 16, 2006.⁴ This order set Mr. B.'s child support at \$836 per month with arrears going back to March 1, 2006. Mr. B. requested a formal hearing.

After the hearing, Mr. B. provided documentation of his medical problems and his disability. A second hearing was held to clarify that only the redacted copies of these records would be added to the record for consideration in this appeal and that this copy would be provided to Ms. J. The Division then provided new calculations as requested based on updated income information. The Division argued that Mr. B.'s 2006 child support arrears should be set at \$886 per month, and his 2007 arrears, and his ongoing child support should be set at \$1,060 based on these calculations. Mr. B. filed a response to the Division's Post Hearing Brief. Mr. B. argued that having to pay this much support would create a hardship for his current household.

B. Findings

1. Based on the evidence in the record I find that it is more likely than not that Mr. B.'s child support based on his 2006 income would result in a monthly child support amount calculated under the formula in Alaska Civil Rule 90.3(a) of \$886 per month.⁵
2. Based on the evidence in the record I find that it is more likely than not that Mr. B.'s child support based on his 2007 income, if he was able to continue his employment with the military through the end of 2007 would result in a monthly child support amount calculated under the formula in Alaska Civil Rule 90.3(a) of \$1,060 per month.⁶
3. Mr. B. will be discharged from the military due to his disability in May of 2007.⁷
4. After he is discharged from the military, Mr. B. will have no income for several months while his claims for disability benefits are processed.⁸

³ Ex. 2.

⁴ Ex. 9.

⁵ Ex.16 & Recording of Hearing.

⁶ Ex.16 & Recording of Hearing.

⁷ Recording of Hearing.

⁸ Recording of Hearing.

5. Mr. B. has shown by clear and convincing evidence that manifest injustice will result if his monthly arrears and ongoing child support are not reduced to \$50 per month.⁹

III. Discussion

Although Mr. B.'s paternity of C. is in dispute, his paternity of C. was legally established through a voluntary acknowledgement of paternity signed after July 1, 1997.¹⁰ Mr. B. is also named as C.'s father on his birth certificate. I cannot simply order CSSD to conduct genetic testing.¹¹

As I explained at the hearing, in order for Mr. B. to have his acknowledgment of paternity set aside and disestablish his paternity of C., Mr. B. must file a disestablishment action in court. Furthermore, any delay in filing such an action could limit the relief Mr. B. might receive from having to pay child support arrears.¹²

Alaska Civil Rule 90.3 provides that an obligor's child support is to be calculated based on his or her "total income from all sources."¹³ A child support award may be varied only "for good cause upon proof by clear and convincing evidence that manifest injustice would result if the support award were not varied."¹⁴ Good cause includes a finding of unusual circumstances.¹⁵

The circumstances of this case are unusual. Mr. B. was left permanently impaired as the result of a medical condition and the surgery he received for that condition. Mr. B. has chronic pain that can be managed but not relieved. The pain that cannot be relieved and the limitations on his physical activities that he must follow in order to manage his pain, are disabling. He is unable to care for himself without assistance from his wife. He is unable to walk more than fifty feet without resting. He is unable to work in his current job with the Army and is being discharged as

⁹ Recording of Hearing.

¹⁰ This means that paternity can be disestablished only through a court action. Alaska Statute 25.27.166(a)(2).

¹¹ Alaska Statute 25.27.166(a)(2).

¹² Recording of hearing.

¹³ Alaska Civil Rule 90.3(a)(1).

¹⁴ Alaska Civil Rule 90.3(c).

¹⁵ Civil Rule 90.3(c)(1)(A).

a result. Following the strict regime that has been developed by his doctors for the management of the chronic pain he suffers renders Mr. B. unemployable. He may receive social security disability payment at some point in the future, but neither these payments nor his military disability payments will support his household above the poverty level. Mr. B. has extra expenses for drugs and other uncovered treatment for his medical problems. Mr. B. will be dependent on his wife and family for financial and other forms of assistance. Mr. B. lives with his wife and three step children. He is in the process of adopting these children.¹⁶

For the foreseeable future, Mr. B.'s household's financial circumstances will be fairly desperate. Even at the time of the hearing, when he was still employed by the military his household had large debts, was receiving public assistance in the form of food stamps, and was borrowing money from family members to meet current expenses. Once Mr. B. is discharged it will take several months for the household's finances to stabilize. They may need to move in order to be closer to family members who can provide support. Mr. B.'s wife will need to find employment. Mr. B. will need to apply for disability benefits. Mr. B. has been informed that it may take several months until his application for these benefits is processed.¹⁷

Because Mr. B. is disabled, his children, including A. and C., will all probably be eligible for Social Security Child Insurance Benefit (CIB) payments as a result of his disability.¹⁸ Most disabled adults who are living on Social Security Benefits do not have to pay any child support because CIB payments are credited against a parent's child support obligation.¹⁹ Once these payments begin, Mr. B.'s child support can be modified. Before these benefits begin, however, it would be unjust to further impoverish the children living with Mr. B. by piling on more debt in the form of child support arrears.

Manifest injustice would result if the support award is not reduced to the minimum in this case. The burden of paying more child support will fall on those upon whom Mr. B. is dependent

¹⁶ Recording of Hearing. Mr. B. estimated that his disability benefits would total \$1,300 per month and that his wife might be able to earn \$5 to \$7 per hour but may not be able to work full-time because of her need to provide care for Mr. B.. Their household income, therefore, is likely to be less than \$24,130, which is the 2007 poverty level in Indiana for a family of five.

¹⁷ Recording of Hearing.

¹⁸ Recording of Hearing.

¹⁹ *Pacana v. Child Support Enforcement Agency* 941 P 2d 1263, (Alaska 1997).

and create additional hardship for the three children in Mr. B.'s household. At the hearing, Ms. J. testified that a reduction in Mr. B.'s support obligation would not impact her ability to support A. and C..²⁰ Once Mr. B. is able to establish his eligibility for Social Security Benefits, his support for A. and C. will be increased through CIB benefits, and Mr. B. will be entitled to a credit against his child support obligation for these payments.²¹

IV. Conclusion

Mr. B.'s arrears and his ongoing child support should be set at the \$50 minimum monthly amount permitted under Civil Rule 90.3(c)(1)(B)

V. Child Support Order

1. Mr. B. owes ongoing child support for A. and C. in the monthly amount of \$50, effective May 1, 2007.
2. Mr. B. is liable for child support arrears for A. and C. in the monthly amount of \$50 for the months of March 2006 through April 2007.

DATED this 10th day of April, 2007.

By: Signed_____

Mark T. Handley

Administrative Law Judge

²⁰ Recording of Hearing. Ms. J. also testified that she is married and has a household income of about \$58,000 per year.

²¹ *Pacana v. Child Support Enforcement Agency* 941 P 2d 1263, (Alaska 1997).

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 Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of May, 2007.

By: Signed_____

Jerry Burnett

Director, Administrative Services

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