

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

IN THE MATTER OF: )

G. S. B., JR. )

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) OAH No. 07-0121-CSS

) CSSD No. 001030568

**CORRECTED DECISION AND ORDER**

**I. Introduction**

This case involves G. S. B. Jr.'s appeal of a Denial of Modification that the Child Support Services Division (CSSD) issued in his case on February 9, 2007. The Obligee children are A., DOB 00/00/89, and B., DOB 00/00/90.

The formal hearing was held on April 4, 2007. Both Mr. B. and Ms. N. appeared by telephone. Mr. B. is represented by Deborah Burlinski. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on May 29, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Having reviewed the record in this case and after due deliberation, the appeal should be granted. CSSD's Denial of Modification should be vacated and Mr. B.'s child support should be modified based on an estimation of his actual income to \$565 per month.

**II. Facts**

**A. History**

Mr. B.'s child support order was set at \$613 per month in December 2004.<sup>1</sup> On December 19, 2006, Mr. B. requested a modification of his order.<sup>2</sup> On December 26, 2006, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. B. did not provide income information, so on February 9, 2007, CSSD denied the petition for modification.<sup>4</sup> Mr. B. filed an appeal on March 7, 2007.<sup>5</sup>

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<sup>1</sup> Pre-hearing brief at pg. 1.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 3.

<sup>5</sup> Exh. 4.

## **B. Material Facts**

Mr. B. is 50 years old; he lives in no name city and works primarily as a commercial fisherman.<sup>6</sup> He also does odd jobs for the No Name Tribal Council, for which he received \$1920 in 2006.<sup>7</sup> Mr. B. also receives Native corporation dividends. In 2006, he received \$1157.54 from the Aleut Corporation and \$527.43 from the King Cove Corporation.<sup>8</sup> Mr. B. has lived in no name city for about three years. Before that, he lived in no name city and had the same kind of odd jobs there. Mr. B. received a GED and attended computer school for 1½ – 2 years, but did not complete his training. He has some carpentry skills and also takes advantage of subsistence game and seafood when available.

Mr. B. lives with his significant other, J. G. She owns the FV no name boat, the boat he fishes on during the summer. Ms. G. pays all of Mr. B.'s living expenses, specifically, \$2,000 per year for food; \$2,400 for electricity; \$12,000 for heating oil; and \$1,200 for telephone during the most recent year, which totals \$17,600.<sup>9</sup> She pays other expenses such as satellite television and travel costs to Anchorage approximately once per year, in addition to Mr. B.'s attorney fees. These additional expenses are estimated at \$2,400, including \$600 per year for the satellite television; \$1,000 per year for transportation to and lodging in Anchorage; and \$800 in attorney fees.

Thus, based on the hearing testimony, it is reasonable to find that Ms. G. pays approximately \$20,000 for Mr. B.'s expenses on an annual basis. In exchange, he works on the fishing boat and keeps up their residence. Ms. G. is employed as the Tribal Council Administrator, for which she earns about \$35,000 – \$40,000 per year.<sup>10</sup>

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<sup>6</sup> Except where otherwise indicated, the facts were derived from Mr. B.'s hearing testimony.

<sup>7</sup> The obligor documented his income information in the unnumbered exhibits attached to his April 3, 2007, Pre-Hearing Brief.

<sup>8</sup> *Id.*

<sup>9</sup> Testimony of Mr. B. and J. G. They gave testimony regarding both the total expenses for the household and specific expenses Ms. G. pays for Mr. B. Where a total household figure was given, it was simply divided in half to determine Mr. B.'s portion.

<sup>10</sup> Testimony of J. G.

### III. Discussion

Mr. B.'s child support previously was set at \$613 per month in December 2004, based on income of approximately \$32,400 that was imputed to Mr. B.<sup>11</sup> CSSD denied his request for modification, which led to this appeal. The person who filed the appeal, in this case, Mr. B., has the burden of proving by a preponderance of the evidence that the agency's Notice of Denial of Modification Review is incorrect.<sup>12</sup>

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>13</sup> If the newly calculated child support amount is more than a 15% change – higher or lower – from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the child support amount may be prospectively modified.

The obligor parent has the burden of proving his or her earning capacity.<sup>14</sup> 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." Under Alaska law, the phrase "total income from all sources" includes "perquisites or in-kind compensation to the extent that they are significant and reduce living expenses, including but not limited to employer provided housing and transportation benefits . . . ."<sup>15</sup>

Mr. B.'s in-kind should be included in his income for the purpose of calculating his child support obligation. He stated several times in the hearing that all of his expenses, including his housing, food and utilities were paid by "the boat." These are clearly in-kind payments in lieu of giving Mr. B. cash payments and they directly provide for his living expenses and support. Were Mr. B. not receiving this support, he would be forced to find other employment that would provide for his financial support. Being given these in-kind expenses allows him to stay in no name city and defer having to obtain work that pays him actual wages.

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<sup>11</sup> Although Mr. B.'s exact income for the 2004 calculation is not known, it is possible to estimate the amount by inserting fictional numbers into CSSD's online child support calculator until the desired child support amount is reached. Here, an income figure of \$32,400, plus the PFD for that year, resulted in a child support amount of \$613 per month for two children. That income figure is close enough for this discussion.

<sup>12</sup> 15 AAC 05.030(h).

<sup>13</sup> AS 25.27.190(e).

<sup>14</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

<sup>15</sup> Civil Rule 90.3, Commentary III.A.19.

This analysis does not change because Mr. B. works for, and his financial support is being provided by, his significant other, J. G. Even though she is employed apart from her fishing boat, it is her business enterprise that reaps the benefit of Mr. B.'s labors and that both of them testified provides his expenses. Given these facts, it is appropriate to include in his income for child support purposes the value of the in-kind benefits they testified about during the hearing.

To calculate a 2007 child support obligation, Mr. B.'s total income from all sources should include his most recent wage income from odd jobs, his Native corporation dividends, the 2007 PFD, plus his in-kind payments from the FV no name boat. These figures are \$1920 from the No Name Tribal Council in 2006 for wages, plus \$1684.97 in nontaxable dividends, the 2007 PFD of \$1654, plus \$20,000 in nontaxable in-kind payments. Added together, these amounts result in total gross income of \$25,258.97.<sup>16</sup> When this figure is inserted into CSSD's online child support calculator, it yields a correct child support amount of \$418 per month for one child and \$565 per month for two children.<sup>17</sup> Because A. may have emancipated on November 1, 2007, both the one-child and two-child figures may be applicable for portions of the effective period of this order.

The recalculated child support amount differs from the amount previously in effect by less than 15 percent for two children. While Rule 90.3(h) establishes that a material change in circumstances is presumed when the adjustment exceeds 15 percent, it does not preclude the Commissioner from finding a smaller change to represent a material change of circumstances. In this case, through unopposed motion practice on the Motion to Correct Child Support Order to Include Obligation for Second Child, the parties effectively stipulated that the change in circumstances was material in this case and that the recalculated child support amount should be used. Moreover, with emancipation of A. partway through the effective period of this order, the change would thereafter exceed 15 percent.

The effective date of the modification is January 1, 2007, which is the first month after CSSD issued the notice that a petition for modification had been filed.<sup>18</sup>

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<sup>16</sup> Exhibit 8.

<sup>17</sup> *Id.*

<sup>18</sup> Exh. 2; *See* 15 AAC 125.321(d).

**IV. Conclusion**

Mr. B. met his burden of proving that CSSD’s Notice of Denial of Modification Review was incorrect. He established “good cause and material change in circumstances” sufficient to modify his ongoing child support, which is calculated at \$418 for one child, \$565 per month for two children, effective January 2007. This figure should be adopted and CSSD’s denial of modification should be vacated.

**V. Child Support Order**

1. CSSD’s February 9, 2007, Notice of Denial of Modification is vacated;
2. Mr. B. is liable for modified ongoing child support in the amount of \$418 for one child, \$565 per month for two children, effective January 1, 2007.

DATED the 7<sup>th</sup> day of May, 2008.

By: Signed  
 Kay L. Howard  
 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 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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 11<sup>th</sup> day of May, 2008.

By: Signed  
 Signature  
Jerry Burnett  
 Name  
Director, Admin Services  
 Title

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