

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

IN THE MATTER OF:)

R. M. B.)

) OAH No. 07-0130-CSS
) CSSD No. 001107620
)

DECISION AND ORDER

I. Introduction

The Obligor, R. M. B., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on February 28, 2007. The Obligee child is J., DOB 00/00/91.

The hearing was held on April 23, 2007. Ms. B. appeared by telephone; the Custodian of record, R. H., did not participate. David Peltier, Child Support Specialist, appeared for CSSD. The hearing was recorded. The record closed on April 23, 2007.

Kay L. Howard, Administrative Law Judge, Alaska Office of Administrative Hearings, conducted the hearing. Based on a review of the entire record in this case and after due deliberation, it is concluded CSSD correctly calculated Ms. B.'s modified child support amount and it should be adopted.

II. Facts

A. History

Ms. B.'s child support obligation for J. was previously set at \$50 per month. CSSD initiated modification of the order. On December 1, 2006, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.¹ On February 28, 2007, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Ms. B.'s modified ongoing child support at \$133 per month, effective January 1, 2007.² Ms. B. appealed on March 12, 2007.³

¹ Exh. 1.

² Exh. 2.

³ Exh. 4.

B. Material Facts

Ms. B. lives in N.S. with her boyfriend, who works occasionally as a laborer, and his child, for whom he receives a small amount of child support.⁴ They do not pay rent, so their monthly household expenses are usually about \$450, not including food or personal expenses such as clothing.

Ms. B.'s 2006 income totaled approximately \$6514.76,⁵ from which a child support amount of \$133 per month is calculated.⁶ She was recently hired to work for Americorps in various programs for kids. She will have a monthly stipend of \$1200 before taxes.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁷ 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." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."⁸ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "good cause and material change in circumstances" has occurred and authorizes modification of the child support order. An increase in Ms. B.'s child support from \$50 per month to \$133 per month represents a change of more than 100%, so modification is allowed.

Ms. B. has requested a reduction in her child support obligation based on a financial hardship, pursuant to Civil Rule 90.3(c). Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. The parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish good cause, the parent must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied." Civil Rule 90.3(c). If there are "unusual circumstances" in a particular case, this also may be sufficient to establish "good cause" for a variation in the support award.⁹

⁴ The facts are taken from Ms. B.'s hearing testimony, unless otherwise indicated.

⁵ Exh. 5.

⁶ Exh. 3.

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ AS 25.27.190(e).

⁹ Civil Rule 90.3(c)(1).

Based on the evidence presented, I find that this case does not present unusual circumstances of the type contemplated by Civil Rule 90.3. Ms. B. did not prove by clear and convincing evidence that manifest injustice will result if the child support amount calculated under Civil Rule 90.3 is not lowered.

Ms. B.'s financial situation may seem strained as a result of the modification, but her income, so long as the Americorps job lasts for a period of time, will likely increase. There is no evidence in the record that she will not be able to handle this modest increase to \$133 per month, even if her boyfriend is not able to work. Given this evidence, it cannot be said that Ms. B. has a hardship such that her child support calculated pursuant to Civil Rule 90.3 should be lowered.

IV. Conclusion

Ms. B. did not meet her burden of proving by clear and convincing evidence that she has a financial hardship that should result in her child support being lowered. CSSD correctly calculated Ms. B.'s modified child support at \$133 per month, based on her actual 2006 income. This amount should be adopted.

V. Child Support Order

- Ms. B. is liable for modified ongoing child support in the amount of \$133 per month, effective January 1, 2007.

DATED this 14th day of May, 2007.

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 within 30 days after the date of this decision.

DATED this 31st day of May, 2007.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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