

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

IN THE MATTER OF)	OAH No. 07-0433-CSS
M. P. B.)	CSSD No. 001128375
)	
_____)	

DECISION AND ORDER

I. Introduction

On August 2, 2007, a formal hearing was held to consider the child support obligation of M. P. B. (Obligor) for the support of his child, D. (Obligee).¹ Mr. B. did not participate in the hearing. The custodial parent, A. B., did not participate either. David Peltier, Child Support Services Specialist, represented the Child Support Service Division (Division). The hearing was audio-recorded. The record closed on August 27, 2007.

This case is Mr. B.'s appeal of the Division's order establishing his monthly child support obligation for his child, D.

Based on the evidence in the record, Mr. B.'s arrears and ongoing child support should be set at the monthly amount in the Division's latest calculations at Exhibit 9. These calculations are based on the Leave and Earnings Statements sent to the Division by Mr. B.

II. Facts

Ms. B. first received public assistance for her child, D., in September of 2003.² Paternity is not now in dispute.³ Paternity was established in an administrative paternity order, after genetic tests, which was not appealed.⁴

The Division issued an Amended Administrative Child and Medical Support Order on June 20, 2007.⁵ The Division set Mr. B.'s monthly ongoing child support for D. at \$607. The

¹ The hearing was held under Alaska Statute 25.27.170.

² Ex. 9, page 6. & Division's Pre Hearing Brief, page 1.

³ Division's Pre Hearing Brief, page 1 & Ex. 2.

⁴ Ex. 2 & 7 & Division's Pre Hearing Brief, page 1.

⁵ Ex. 6.

order also established arrears beginning in September of 2003. Mr. B. requested a formal hearing.⁶

Prior to the hearing, Mr. B. provided information regarding his income.⁷

Mr. B. did not provide a phone number to contact him as instructed on the notice of hearing sent to him prior to the hearing. Mr. B. did not answer at his phone numbers of record at the time of the hearing.

The record was held open to give the Mr. B. time to request that the hearing be rescheduled. He did not request that the hearing be rescheduled.

After the hearing, the Division filed a Post Hearing Brief, which included new calculations and a new Summary of Support Obligation. Mr. B. was sent a copy of the Division's Post Hearing Brief. He did not respond.

Based on the evidence in the record, I find that it is more likely than not that the Division's latest calculations at exhibit 9 and the information used in these calculations at exhibit 8 are correct.⁸

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Mr. B., has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁹

With his pre-hearing filing, Mr. B. showed that his income was different from the amounts the Division had used to calculate his monthly child support for D. in the Amended Administrative Child and Medical Support Order. Mr. B. provided copies of his pay records for all the years covered by the child support order.¹⁰

Based on the information provided by Mr. B., the Division recalculated his monthly child support.¹¹

⁶ Ex. 7.

⁷ Ex. 8 & Recording of Hearing.

⁸ Recording of Hearing & Ex. 10.

⁹ Alaska Regulation 15 AAC 05.030(h).

¹⁰ Recording of Hearing & Ex. 8.

¹¹ Ex. 8 & 9.

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."¹² 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."¹³ Good cause includes a finding of unusual circumstances.¹⁴

The Commentary to Civil Rule 90.3 states that when establishing support retroactively, the amount calculated should be varied when it is necessary to do so in order to prevent unfairness that could result. In these cases it is appropriate to consider all relevant circumstances to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a). Civil Rule 90.3, Commentary VI, E.1. provides:

It will sometimes be necessary for the court to establish support for a time when no complaint or petition for support had yet been served, and there was no other court or administrative order in effect. The court has determined that Civil Rule 90.3 applies to such calculations. *Vachon v. Pugliese*, 931 P.2d 371, 381-2 (Alaska 1996). However, in some circumstances unfairness may result from rigid application of the rule. The court should consider all relevant factors in such a situation, including whether the obligor was aware of the support obligation, especially if the obligor had children subsequent to that child.

Mr. B. did not participate in the hearing.¹⁵ He has not provided clear and convincing evidence that the circumstances of this case are unusual. The record in this case, therefore, does not support a finding of good cause for lowering Mr. B.'s arrears under Civil Rule 90.3(c).

IV. Conclusion

Mr. B.' monthly child support should be set in accordance with the Division's latest calculations and its updated Summary of Support Obligation at Exhibit 9.

¹² Alaska Civil Rule 90.3(a)(1)

¹³ Alaska Civil Rule 90.3(c).

¹⁴ Civil Rule 90.3(c)(1)(A).

¹⁵ This decision is issued under the authority of 15 AAC 05.030(j)), which authorizes the entry of a decision if "a person requests a hearing and fails to appear at the hearing.

V. CHILD SUPPORT ORDER

The Division’s Amended Administrative Child and Medical Support Order issued on June 20, 2007 is amended as follows, all other provisions of that order remain in effect:

1. Mr. B.’s ongoing child support for D. is set in the monthly amount of \$771, effective January 1, 2008.
2. Mr. B.’s child support arrears for D. are set in the monthly amount of \$347 for September through December of 2003; \$445 per month for all of 2004; \$622 per month for all of 2005; \$716 per month for all of 2006; and \$771 per month for all of 2007.
3. The Division shall give parties the appropriate credit or debit for any out-of-pocket expenses for providing health insurance coverage for D.

DATED this 28th day of December, 2007.

By: Signed

 Mark T. Handley
 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 17th day of January, 2008.

By: Signed

 Signature
Mark T. Handley

 Name
Administrative Law Judge

 Title

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