

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

IN THE MATTER OF)
)
 R. B.) Case No. OAH-07-0687-CSS
) CSSD Case No. 001135770
_____)

DECISION & ORDER

I. Introduction

The obligor, R. B., appeals CSSD’s decision of October 22, 2007, to deny his request for modification review. Administrative Law Judge Dale Whitney of the Office of Administrative Hearings heard the appeal on December 17, 2007. Mr. B. appeared by telephone, as did the custodian of record, T. V. G.. David Peltier represented CSSD by telephone. The child is A. B., (DOB 00/00/98). CSSD’s decision is affirmed.

II. Facts

Support in this case was set at \$733 per month effective August 1, 2006, after a formal hearing was held on February 23, 2007. This support amount was based on a finding that Mr. B. earned gross income of \$51,340 in 2006. When Mr. B. requested a modification review on July 18, 2007, about two months after the decision in the previous hearing, CSSD denied the request on the grounds that there had been no material change in circumstances. Regarding his income, Mr. B. testified at the formal hearing that “not much has changed.” For the period from May, 2007, through September, 2007, Mr. B. was working part-time. When his hours were reduced Mr. B. was not sure if he would be able to work full-time again in the future, but after September he did secure full-time employment. Mr. B. estimated at the hearing that his gross annual income for 2006 would be about \$52,000. To the extent this level of income would produce any change in the amount of the child support obligation, the change would be negligible. Mr. B. speculated that at some point in the future the parties might exercise shared custody.

Mr. B. is paying off arrears in the State of California for an older child of a previous relationship who was born in 1973. These payments are for arrears, not ongoing support.

III. Discussion

According to Civil Rule 90.3(h),

A final child support award may be modified upon a showing of a material change of circumstances as provided by state law. A material change of circumstances will be presumed if support as calculated under this rule is more than 15 percent greater or less than the outstanding support order.

According to the Civil Rule 90.3 Commentary, “A temporary reduction in income normally will not justify an ongoing modification reducing child support.”¹ At a formal hearing, the person requesting the hearing has the burden of proving that the division’s decision was in error.²

In his written appeal, Mr. B. stated the reasons for his modification request,

Specifically that I was being charged child support based on my earnings from the last upward modification. From the period of May 2007 to September 2007 I received substantially less pay but was being assessed a hefty amount of child support based on the prior period and pay rate. Not only is that patently unfair, it is also economically devastating. I don’t disagree that I should pay child support, but I don’t believe I should be bankrupted either. My finances were put in an emergency state during period of time. I have still not caught up. Also, my 2007 income as provided in the Oct 22, 2007 guideline does not match with the totals reflected on my Oct 25th paycheck. They have \$60,838 listed as my 2007 income to date on that date, my paystub states \$38,606.03 gross. What are they basing their numbers on?

The principal basis of Mr. B.’s argument appears to be that he should pay less support for the period when he was only working part-time. The nature of Mr. B.s’ employment and the amount of his income varied in 2007, just as it did in 2006. Mr. B. works as a legislative aide part of the year, and in the theater part of the year. In both of these occupations, the amount of time one will be working and the precise amount of future earnings are usually not certain. Although his income fluctuates throughout the year, the amount of child support remains constant based on the total income for the year.

Mr. B.’s assertion that he was “being assessed a hefty amount of child support based on the prior period and pay rate” when he went to part-time work is incorrect. The support amount was based on total income for 2006, which included periods when he was earning less than he earned at the times when he was working full-time in the legislature. Had the support been based just on the hourly rate he was earning during the period of his peak income for the year, the monthly support amount probably would have been higher.

Civil Rule 90.3(c)(5) does provide for obligors whose income varies by season:

If the non-custodial parent's income is seasonal, the court may order that the annual support amount be paid in unequal monthly payments, with higher payments during the months the parent expects to receive higher income and lower payments in other months. The court should not make such an order unless (a) it finds that the burden of budgeting for periods of unequal income should be placed on the obligee rather than the obligor and (b) the obligee agrees.

¹ Civil Rule 90.3 Commentary, §X.A.

² 15 AAC 05.030(h).

Application of this portion of the rule would allow Mr. B. to pay less when his income is reduced, but it would also require a corresponding increase over the current amount during times when his income is higher. This portion of the rule should not be applied because Mr. B. has not demonstrated “that the burden of budgeting for periods of unequal income should be placed on the obligee rather than the obligor” and because Ms. V. G. has not agreed to such an arrangement.

Finally, Mr. B. argues that he is entitled to a deduction for support paid to an older child of a previous relationship. Civil Rule 90.3(a) allows a deduction from gross income for “child support and alimony payments arising from prior relationships which are required by other court or administrative proceedings and actually paid.” Mr. B. has no ongoing support obligation to his older child, merely a debt for unpaid arrears from the past. Because he has no current support obligation, Mr. B. is not entitled to a deduction for support of another child.

IV. Conclusion

Mr. B. has not met his burden of proving that CSSD’s decision was in error. Because there has not been a material change in circumstances, a modification of support is not warranted at this time. CSSD’s decision should be affirmed.

V. Order

IT IS HEREBY ORDERED that CSSD’s decision of October 22, 2007, to deny Mr. B.’s request for modification review be AFFIRMED.

DATED this 3rd day of January, 2008.

By: Signed _____
DALE WHITNEY
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 25th day of January, 2008.

By: Signed
 DALE WHITNEY
 Administrative Law Judge

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