

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

IN THE MATTER OF:)
)
R. L. B., JR.)
)
_____) OAH No. 07-0711-CSS
CSSD Case No. 001138066

DECISION AND ORDER

I. Introduction

This case concerns the obligation of Sgt. R. L. B., Jr., for the support of Z. N. (DOB 00/00/05). The custodian of record is A. N.

On November 27, 2007, the Child Support Services Division issued an amended administrative child support order establishing a support obligation of \$599 per month, with arrears beginning July 1, 2005, at the rate of \$574 per month in 2005, \$865 per month in 2006, and \$599 per month in 2007. Sgt. B. filed an appeal and requested an administrative hearing.

The case was referred to the Office of Administrative Hearings and the assigned administrative law judge conducted a telephonic hearing on January 10, 2008. Sgt. B. and Ms. N. participated and provided testimony. Andrew Rawls represented the division.

Based on the testimony at the hearing and the evidence in the record, arrears are set at minimum amount through the date paternity was established, and arrears and ongoing support from that date are set at \$599 per month.

II. Facts

R. L. B. is a sergeant in the United States Army.¹ He has two biological children, Z. and a nine-year-old daughter. Z. was born on 00/00/05, and Sgt. B. was served by mail pursuant to Civil Rule 4(c) with a civil petition for determination of his paternity of

¹ Application for Uniformed Services Identification Card.

Z. on March 14, 2006.² Sgt. B.'s paternity of Z. was confirmed on April 24, 2007, after his marriage, by genetic testing,³ and a judgment of paternity was issued on June 18, 2007.⁴

While the petition was pending, in September, 2006, Sgt. B. married. He is the custodial step-parent of his wife's three biological children, ages eleven, eight and four. His wife is unemployed and does not receive any child support by order of a court or child support agency for any of the three children, but does receive occasional payments from two of the children's fathers when a request for financial aid is made.

Sgt. B.'s total income in 2005 for child support purposes was \$45,419, including \$30,621 in wages, and \$14,798.16 in military benefits, and excluding a \$9,870 business loss.⁵ His total income in 2006 for child support purposes was \$69,034, including \$53,887 in wages (including a bonus of \$21,000),⁶ \$15,147.12 in military benefits, and excluding a \$8,298 business loss.⁷ His total income in 2007 for child support purposes was \$47,336, including \$31,372.68 in wages and \$15,964.56 in military benefits and specialty pay.⁸

Sgt. B.'s monthly take home pay after taxes, and including his housing allowance, is approximately \$3,423.⁹ His household consists of six persons: Sgt. B. and his daughter N., and his wife and her three children. The monthly household expenses total about \$2,947, including rent (\$988, including utilities), food (\$450), cell phone (\$110), cable TV (\$65), transportation (\$839),¹⁰ rental and health insurance (\$45), personal care items

² Ex. 2, p. 1. Civil Rule 4(c)(1) states: "Service of all process shall be made [personally] or where rule so provides, by registered or certified mail." Civil Rule 4(h) provides for service by registered or certified mail, return receipt requested, and states that service is complete "when the return receipt is signed." Presumably, March 14, 2006, is the date Sgt. B. signed the return receipt for the summons issued in the paternity action.

³ Ex. 1.

⁴ Ex. 2, pp. 1-3.

⁵ Ex. 12, p. 7; Ex. 8, pp. 5-6 (2005 tax return).

⁶ Ex. 8, p. 3 (2006 tax return).

⁷ Ex. 8, p. 3.

⁸ Ex. 12, p. 7 (extrapolated from income through July, 2007, as shown on Ex. 8, pp. 9-11).

⁹ Sgt. B. testified that his monthly take home pay is approximately \$2,200. However, it appears that this amount does not include his monthly housing allotment. *See* Ex. 8, p. 10 (mid-month pay = \$1,174.39; E[nd] O[f] M[onth] pay = \$1,173.87; BAH = \$1,075).

¹⁰ Sgt. B. testified that he owns a 2006 Jeep Commander, bought in January, 2007, on which he owes \$28,000 and makes a payment of \$574 per month. He testified that gasoline costs \$120 per month, maintenance is \$30 per month, and auto insurance is \$115 per month.

(\$400),¹¹ and entertainment (\$50). In addition to these household expenses, Sgt. B. makes monthly payments of about \$100 on his credit card debt of about \$1,300.

III. Discussion

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,¹² that is, income after allowable deductions.¹³ In this case, Sgt. B. did not dispute the division's calculation of his income or the deductions provided to him. His presumptive child support obligation for the period of arrears and for ongoing support was correctly calculated in the division's amended support order. Sgt. B. argues, however, that the amount of arrears and ongoing support is more than he can afford, and that both amounts should be reduced in light of his particular circumstances.

The support obligation may be reduced if the amount as calculated under 15 AAC 125.070 would result in a manifest injustice due to unusual circumstances.¹⁴ The obligor must provide clear and convincing evidence of manifest injustice.¹⁵ In determining whether manifest injustice exists, all of the relevant circumstances should be considered.¹⁶ The first and foremost consideration is the needs of the children.¹⁷

Sgt. B. argues that his ongoing child support obligation should be reduced because his current monthly available income (\$3,423) is insufficient for him to meet his total monthly expenses (\$3,596), consisting of his monthly household expenses (\$2,897), his child support obligation (\$599), and debt payment (\$100). He testified that he believed he could afford to pay \$400 per month as ongoing support for Z. However, the facts indicate that Sgt. B.'s monthly cash flow is not seriously out of balance (-\$173 per month), and that his monthly income tax withholding does not reflect his actual annual income tax liability. In addition, Sgt. B. has assumed full responsibility for the support of his stepchildren, who receive no regular income support either from their mother or from their father. For these reasons, Sgt. B. has not established by clear and convincing evidence that the presumptive amount of ongoing support for Z. is manifestly unjust.

¹¹ Personal care items include clothing.

¹² 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

¹³ 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

¹⁴ 15 AAC 125.075(a)(2).

¹⁵ 15 AAC 125.075(a); *see* Civil Rule 90.3(c)(1).

¹⁶ *See* 15 AAC 125.080.

With respect to Sgt. B.'s obligation for arrears, however, the circumstances are materially different. When adequate information is available, arrears may be based on the actual income received during the period for which the arrears are due.¹⁸ However, unfairness may result from the rigid application of the presumptive support amount for periods of time prior to the service of a complaint or petition for support.¹⁹ In this case, arrears accumulated for two years before Sgt. B.'s paternity was established. Furthermore, Sgt. B.'s income substantially increased in 2005 from what it was in 2004, and in 2006 he received a substantial cash bonus that was not a regular source of income.²⁰ Finally, in all three years, 2005-2007, Sgt. B. had substantial business losses which the division disregarded in the calculation of his available income for purposes of child support, without any evidentiary support. In the absence of any evidence one way or the other as to the nature of the loss claimed, it is appropriate to take that loss into consideration with respect to the calculation of arrears. Finally, it would not be in the best interests of Sgt. B.'s older child to impose an obligation for arrears that would reduce Sgt. B.'s monthly available income to the point that he is unable to meet his support responsibilities for his older child; imposition of arrears in the presumptive amount would have that effect.

In considering whether to reduce the support obligation for arrears, the impact of a reduction on his younger child must also be considered. In this case, the division conceded that reducing or eliminating the arrears would have no impact on Z., because none of the amount owed would be paid to his custodian.

IV. Conclusion

There is clear and convincing evidence of facts under which the child support obligation for arrears is manifestly unjust. Arrears should be set at the minimum amount through the date paternity was established. Arrears and ongoing support thereafter should be set at the presumptive amount.

¹⁷ Doyle v. Doyle, 815 P.2d 366, 373 (Alaska 1991). See Civil Rule 90.3, Commentary at I(B) ("The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay.").

¹⁸ Duffus v. Duffus, 72 P.3d 313, 321 (Alaska 2003); Spott v. Spott, 17 P.3d 52, 56 (Alaska 2001).

¹⁹ See Civil Rule 90.3, Commentary at VI(E)(1).

²⁰ It appears that this bonus may have been a re-enlistment bonus.

CHILD SUPPORT ORDER

The Amended Administrative Child Support and Medical Support Order dated November 27, 2007, is **AMENDED** as follows; in all other respects, the Modified Administrative Child Support and Medical Support Order dated November 27, 2007, is **AFFIRMED**:

1. Sgt. B.'s arrears are set at \$50 per month, for the months from July 1, 2005, through July 31, 2007; and at \$599 per month, for the months from August 1, 2007, through February 29, 2008.

2. Amended ongoing child support is set at \$599 per month, effective March 1, 2008.

DATED: February 13, 2008

Signed

Andrew M. Hemenway

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 29th day of February, 2008.

By:

Signed

Signature

Andrew M. Hemenway

Name

Administrative Law Judge

Title

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