

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

IN THE MATTER OF:)	
)	
R. G. O.)	
)	
_____)	OAH No. 08-0122-CSS CSSD Case No. 001108879

CORRECTED DECISION AND ORDER¹

I. Introduction

This case concerns the obligation of R. G. O. for the support of C. L. B. (DOB 00/00/01). The custodian of record is L. G. B.

The Child Support Services Division issued an administrative child support order dated November 6, 2003, in the amount of \$226 per month. On November 7, 2007, Ms. B. requested modification of the support order. On January 31, 2008, the division issued a modified support order in the amount of \$449 per month, effective December 1, 2007.

Mr. O. appealed and requested a formal hearing. The assigned administrative law judge conducted a telephonic hearing on April 7 and May 1, 2008. Mr. O. participated, as did Ms. B. Andrew Rawls represented the division.

Based on the preponderance of the evidence in the record and the testimony at the hearing, modified child support order will be set at \$398 per month.

II. Facts

At the time the request for modification was filed, R. O. was working full time at a grocery store in Kenai, earning \$11 per hour. He worked substantial overtime in the first two quarters of 2007, and his total income for 2007 was \$33,084, including wages from IGA of \$31,430 and his Alaska Permanent Fund dividend.²

In late 2007 and early 2008, Mr. O. suffered gastrointestinal problems. Eventually, due to his condition he was unable to work. He was terminated from his position on February 17 and was unable to return to work until April 8, 2008. Mr. O. found employment beginning on April 18, working for an oil field services contractor in

¹ The number "382" in the last sentence of the Introduction has been changed to "398" to correct a typographical error.

Beluga. He presently is on call as a part-time, non-permanent employee, earning \$10 per hour. Mr. O. anticipates returning to work at the grocery store when a position becomes available. However, because of his condition he will be restricted to warehouse work and will not be given as much overtime as in the first half of 2007. He expects to work about 45 hours per week, equivalent to 40 hours at his regular wage and 5 hours at overtime. His anticipated annual income after he returns to work at the grocery store will be about \$27,005 in wages, plus his Alaska Permanent Fund dividend.

III. Discussion

The annual child support payment for one child in the absence of shared custody is 20% of the adjusted annual income.³ When the child support obligation changes by an amount greater than 15% of the existing order, a material change of circumstances is presumed and the existing order may be modified.⁴

The division initially modified Mr. O.'s support order based on his actual earnings in the four quarters prior to the request for modification. However, Mr. O. testified that when he returns to work at the grocery store he will be restricted in his hours, as occurred during the second half of 2007, when he worked an average of 42.26 hours per week as compared with an average of 55.13 hours per week in the first half of 2007.⁵ At his anticipated workload of 45 hours per week, Mr. O.'s weekly earnings for 50 weeks would be \$522.50,⁶ and for two weeks' vacation he would be paid \$880, for total annual earned income of \$27,005.⁷ While Mr. O. may earn somewhat more or less than that for a period of time while working in Beluga, his anticipated earnings upon return to the grocery store are a good estimate of his anticipated annual earnings. Including his Alaska Permanent Fund dividend, Mr. O.'s total anticipated income is \$28,659, and his modified ongoing support obligation is \$398, as shown on Appendix A.

IV. Conclusion

A material change of circumstances is presumed and the existing support order may be modified. Because Mr. O. was unable to work for several months after the

² Ex. 5, p. 4.

³ Civil Rule 90.3(a)(2)(A); 15 AAC 125.010, -.070(a).

⁴ Civil Rule 90.3(h)(1).

⁵ Ex. 5, pp. 3-4

⁶ $40 \times \$11 = \440 ; $5 \times \$16.50 = \82.50 ; $\$440 + \$82.50 = \$522.50$.

⁷ $50 \times \$522.50 = \$26,125$; $\$26,125 + \$880 = \$27,005$.

request for modification was served, there is good cause to move the effective date forward.

CHILD SUPPORT ORDER

The Modified Administrative Child Support and Medical Support Order dated January 17, 2008, is AMENDED as follows; in all other respects, the Modified Administrative Child Support and Medical Support Order dated October 17, 2007, is AFFIRMED:

Modified ongoing child support is set at the amount of \$398 per month, effective May 1, 2008.

DATED: June 26, 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 26th day of June, 2008.

By: *Signed* _____
Signature
Andrew M. Hemenway
Name
Administrative Law Judge
Title

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