

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

IN THE MATTER OF:            )  
  )  
          D. A. B.                    )  
\_\_\_\_\_                          )

OAH No: 08-0278-CSS  
CSSD No: 001146200

**DECISION AND ORDER**

**I. Introduction**

D. A. B. has appealed an Administrative Review Decision (“Decision”) issued by the Child Support Services Division (“CSSD”) on May 15, 2008.<sup>1</sup> The Decision affirmed the Amended Administrative Child and Medical Support Order issued by CSSD on May 15, 2008 which set monthly child support in the amount of \$451 per month for two children.<sup>2</sup> Ms. B., obligor, is the mother of B. B. (DOB 00/00/93), N. B. (DOB 00/00/98), P. K. W. (DOB 00/00/02), and L. A. W. (DOB 00/00/05). *Only* P. and L. are the subjects of this Decision and Order.

Ms. B. filed her appeal in this matter on June 5, 2008.<sup>3</sup> The hearing in this matter commenced on June 30, 2008. James T. Stanley, Administrative Law Judge for the Alaska Office of Administrative Hearings, conducted the hearing. Ms. B. appeared in person. D. B., grandfather and custodian of P. and L., appeared in person. David Peltier, Child Support Specialist, appeared in person and represented CSSD. The hearing was recorded. The record closed on July 22, 2008.

Having reviewed the record in this case and after due deliberation, Ms. B.’s appeal is granted. She is not entitled to a hardship variance pursuant to Civil Rule 90.3(c) but the totality of her current circumstances and probable employment does support a child support award of \$396 per month for P. and L.

**II. Facts**

Ms. B.’s child support obligation for P. and L. was administratively set at \$328 per month on January 18, 2008.<sup>4</sup> On April 30, 2008, the court entered a child support order requiring Ms.

---

<sup>1</sup> Exhibit 5, p. 10.  
<sup>2</sup> Exhibit 5, pp. 1-9.  
<sup>3</sup> Exhibit 6.  
<sup>4</sup> Exhibit 1, p. 1.

B. to pay \$538 per month for the benefit of B. and N.<sup>5</sup> The Amended Administrative Child and Medical Support Order of May 15, 2008 increased the child support for P. and L. from \$328 per month to \$451 per month.

Ms. B.'s monthly living expenses total \$1377 as depicted in her hardship checklist.<sup>6</sup> Ms. B. applied for and received food stamps in March, April and May of 2008.<sup>7</sup> On March 26, 2008, Ms. B. successfully completed an intensive outpatient program offered by the Southcentral Foundation,<sup>8</sup> thereby allowing her to obtain full-time employment on April 7, 2008 at the rate of \$13.80 per hour.

CSSD estimated Ms. B.'s income for 2008 using a single paycheck stub<sup>9</sup> and employment information for the job commencing April 7, 2008 and ending on June 20, 2008.<sup>10</sup> By extrapolating the limited income information available, CSSD estimated that Ms. B.'s total gross income for 2008 would be \$30,246.54, and that \$5406.11 would be available as child support for P. and L. In stark contrast to the estimated 2008 income for Ms. B., her tax return for 2007 shows actual total annual income of \$5,579.<sup>11</sup>

### **III. Discussion**

The central issue raised in this appeal is whether Ms. B. is entitled to a variance of her child support obligation in light of her circumstances, earnings history, and expenses.

Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. Civil Rule 90.3(a)(1) provides that Ms. B.'s child support amount is to be calculated based on her "total income from all sources." The amount of support a child is entitled to receive from a particular parent is determined by that parent's ability to provide for the child.<sup>12</sup> The obligor parent may obtain a reduction in the amount calculated,

---

<sup>5</sup> Exhibit 4, p. 6. issued in *S. B. v. D. B.*, Case No. 3PA-00-00000 CI, in the Superior Court for the State of Alaska at Palmer. The record does not disclose how the court calculated child support in the amount of \$538 per month. The record does show that Ms. B. started a job paying \$13.80 per hour approximately two weeks before the court's child support order was entered; she lost this job approximately eight weeks after the court's child support order was entered.

<sup>6</sup> Exhibit 10.

<sup>7</sup> Exhibit 8, pp. 7-8.

<sup>8</sup> Dena A Coy ("the people's grandchildren" in Athabaskan) is a comprehensive, individualized addiction and mental health treatment program for pregnant, parenting and non-pregnant women. The program supports women's efforts to become sober, productive community members, while fulfilling their role as a parent. [www.scf.cc/denacoy.cfm](http://www.scf.cc/denacoy.cfm).

<sup>9</sup> Exhibit 4, p. 3. A paycheck stub showing employment as of March 28, 2008 at the rate of \$8.50 per hour.

<sup>10</sup> Exhibit 11.

<sup>11</sup> Exhibit 9.

<sup>12</sup> Civil Rule 90.3 Commentary (I)(B).

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<sup>13</sup> that “manifest injustice would result if the support award were not varied.”<sup>14</sup> A finding that “unusual circumstances” exist in a particular case may be sufficient to establish “good cause” for a variation in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children . . . .  
[15]

It is appropriate to consider all relevant evidence, including the Custodian’s income, to determine if the support amount should be set at a different level than provided under the schedule in Civil Rule 90.3(a).<sup>16</sup>

Ms. B.’s claimed monthly expenses of \$1377 per month appear entirely reasonable, if not understated.<sup>17</sup> Her expenses do not reflect significant consumer debt. During 2008, Ms. B.’s longest period of employment was at \$8.50 per hour. For approximately ten weeks in 2008, Ms. B. held employment paying her \$13.80 per hour. Evidence in the record is sufficient to find that employment at \$8.50 per hour is the likely norm,<sup>18</sup> whereas a shorter period of employment at \$13.80 per hour is the exception. No evidence or inference suggests that Ms. B. is underemployed or voluntarily unemployed.

If Ms. B. worked forty hours per week at \$8.50 per hour in 2008, she would have annual income of \$17,816<sup>19</sup> exclusive of the PFD and other dividend income; including her PFD (\$2069), Alaska Resource Rebate \$(1200) and non-taxable dividends (\$5855)<sup>20</sup> yields an annual income of \$26,940, or an average monthly gross income of \$2245. With total taxable gross income of \$19,885 (wages at \$8.50 plus PFD), total non-taxable income of \$5855, and total

---

<sup>13</sup> The clear and convincing standard of proof is more difficult to meet than the preponderance of the evidence standard.

<sup>14</sup> Civil Rule 90.3(c).

<sup>15</sup> Civil Rule 90.3(c)(1).

<sup>16</sup> See Civil Rule 90.3, Commentary VI.E.1.

<sup>17</sup> Exhibit 10 (all monthly expenses) reflects rent at \$700, food at \$200, cell phone at \$20, gasoline at \$200, auto insurance at \$187, personal care at \$50, and medical expenses at \$20.

<sup>18</sup> Exhibit 4, p. 3.

<sup>19</sup> Based on 2096 working hours in 2008.

<sup>20</sup> Exhibit 5, p. 5. Ms. B. owns one hundred share of Arctic Slope Regional Corporation.

monthly deductions of \$777.25.<sup>21</sup> Rule 90.3 mandates that Ms. B. pay child support for two children in the amount of \$396 per month (in addition to the court-ordered child support payment of \$538 per month).

Adding her court-ordered child support of \$538 per month to the recalculated child support of \$396 per month, plus her claimed expenses of \$1370, yields total expenses of \$2281 per month. Viewed differently, her estimated monthly expenses (\$2281) exceed her estimated income (\$2245) by \$36 per month. If she does not work the entire year, or if she does not earn at least \$8.50 per hour, or if she should incur unplanned expenses, she will be more than \$36 “short” per month. Careful management of her expenses will be required.

Considering the totality of circumstances and recognizing Ms. B.’s efforts to be a responsible and productive worker, the minimal difference between estimated expenses and income for 2008 does not represent “good cause” requiring variance from the amount of child support calculated under Rule 90.3.

If the annual income of Ms. B. should materially change<sup>22</sup> as a result of fewer work hours, reduced rate of pay, injury, or other verifiable reasons, Ms. B. may apply for a change in the child support amount.<sup>23</sup> The effective date for a modified child support order is the first day of the month following the request for a modification, even though the formal hearing may not occur soon after the request.<sup>24</sup>

#### **IV. Conclusion**

Ms. B. met her burden of proving by a preponderance of the evidence that child support in the amount of \$451 per month for P. and L. is incorrect based upon the reasonable likelihood that she will not earn more than \$8.50 per hour.

#### **V. Child Support Order**

Ms. B. is liable for ongoing child support in the amount of \$396 per month, effective June 1, 2008. All other terms, conditions, and obligations of the Amended Child and Medical Support Order dated May 15, 2008 remain unchanged and in effect .

---

<sup>21</sup> \$777.25 includes federal income tax of \$118.25, FICA of \$113.58, SUI of \$7.42, and child support of \$538 from a prior relationship.

<sup>22</sup> Civil Rule 90.3(h) (1). A material change is presumed if the child support amount calculated pursuant to Civil Rule 90.3 changes more than 15%, up or down.

<sup>23</sup> AS 25.27.190.

<sup>24</sup> 15 AAC 125.321(d).

Dated this 4th day of December, 2008.

By: Signed

James T. Stanley  
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 22nd day of December, 2008.

By: Signed

Signature

James T. Stanley

Name

Administrative Law Judge

Title

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