

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

IN THE MATTER OF:)

I. J. B.)

) OAH No. 08-0336-CSS
) CSSD No. 001136260
)

DECISION AND ORDER

I. Introduction

The Obligor, I. J. B., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on May 28, 2008. The Obligee children are L., DOB 0/0/05, and A., DOB 0/00/06.

The formal hearing was held on July 28, 2008. Mr. B. appeared by telephone. The Custodian, E. J. H., also participated by telephone but chose not to present any testimony. David Peltier, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on August 11, 2008.

Kay L. Howard, Administrative Law Judge, conducted the hearing. Having reviewed the record in this case and after careful consideration, Mr. B.' child support should be set in the minimum amount of \$50 per month, effective April 1, 2008, and ongoing.

II. Facts

Mr. B.' child support obligation for L. was previously set at \$229 per month in June 2005.¹ CSSD initiated a modification review so as to add a second child, A., to the order. On March 4, 2008, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.² Mr. B. did not provide income information.³ On May 28, 2008, CSSD issued a Modified Administrative Child Support and Medical Support Order that added A. to the order for L. and set Mr. B.' modified child support at \$50 per month for two children, effective April 1, 2008, and further modified his child support to \$294 per month for two children, effective September 1, 2008.⁴ Mr. B. filed an appeal on July 1, 2008, stating he is incarcerated and will

¹ Exh. 1.

² Exh. 3.

³ Pre-hearing brief at pg. 1.

⁴ Exh. 4 at pgs. 1 & 4-5.

remain so until at least June 2009. He added he was released for one week only in May 2008 for medical reasons and returned to jail to serve his sentence.⁵

At the hearing, CSSD explained that Mr. B.' child support was modified to \$50 per month because he was incarcerated at the time the modification was initiated, but that records obtained by the agency indicate he was released on May 19, 2008.⁶ For that reason, his child support was increased prospectively to \$294 per month effective September 1, 2008, based on the minimum wage.⁷ CSSD further indicated that if Mr. B.' documents establish that he will remain incarcerated for a period of time, his child support should remain at \$50 per month rather than being increased as of September 2008.

After the hearing, Mr. B. provided a copy of his "Time Accounting Record" prepared by the Department of Corrections. It indicates that he is currently incarcerated, his maximum release date is June 2, 2010, and if he receives all of his good time, he may be released as early as July 2, 2009.⁸

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."¹⁰ Civil Rule 90.3 presumes that if the newly calculated child support amount is more than 15% higher or lower than the previous order, the requirement for "good cause and material change of circumstances" has been met and the support amount may be modified. However, Civil Rule 90.3(h) does not require that the child support amount be modified if that 15% threshold change is not reached.

CSSD correctly calculated Mr. B.' modified child support obligation for two children at \$50 per month, based on his incarceration. When it was learned that he had not been released permanently in May 2008, but for only one week in order to take care of medical issues, CSSD agreed that his child support should remain at \$50 per month until his time is served.

⁵ Exh. 6.

⁶ See Exh. 4 at pg. 4.

⁷ See Exh. 5 at pg. 1.

⁸ Received on August 4, 2008, and marked as Exhibit 8.

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ AS 25.27.190(e).

IV. Conclusion

Mr. B. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. His modified child support has now been correctly set at \$50 per month, effective April 1, 2008,¹¹ without a further modification in September 2008, and that amount should be adopted.

V. Child Support Order

- Mr. B. is liable for modified ongoing child support in the amount of \$50 per month, effective April 1, 2008, and ongoing;
- All other provisions of the May 28, 2008, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 27th day of August 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

¹¹ A modification is effective beginning the month after the parties are served with notice that a modification has been requested. 15 AAC 125.321(d). In this case, CSSD issued notice of the modification review on March 4, 2008, making the modification effective on April 1, 2008. See Exh. 3.

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 15th day of September 2008.

By: Signed
Kay L. Howard
Administrative Law Judge

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