

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

In the matter of:)	
)	OAH No. 08-0441-CSS
G. W. B., JR.)	CSSD No. 001150906
_____)	

DECISION AND ORDER

I. Introduction¹

G. W. B., Jr., the Obligor, disputes the shared custody calculation utilized by CSSD in the Amended Administrative Child Support and Medical Support Order dated May 29, 2008. This order set Mr. B.'s ongoing child support obligation at \$1,050 per month effective June 1, 2008, and arrears from September 1, 2007 through May 31, 2008, in the amount of \$7,238. The Custodian of record is A. E. B. Andrew Rawls, Child Support Specialist, appeared on behalf of CSSD. The Obligee children are J. B. B., DOB 00/00/93 and N. L. B., DOB 00/00/95. A telephonic hearing was held on October 27, 2008. During the hearing the parties agreed that beginning January 1, 2008 and ongoing, the parties share custody of the children with each parent having custody of the children 50% of the time. Therefore, the remaining unresolved issue is the appropriate child support calculation for the period from September 1, 2007 through December 31, 2007.

II. Facts

Mr. and Ms. B. separated on June 29, 2007. Ms. B. remained in the family home with the children. She requested Child Support Services on September 11, 2007.² On March 13, 2008, CSSD issued an Administrative Child Support and Medical Support Order establishing Mr. B.'s child support obligation for two children at \$1,215 per month effective April 1, 2008 and ongoing. This order also established arrears in the amount of \$8,055 for the period from September 1, 2007 through March 31, 2008.³ CSSD calculated child support based on Ms. B. having primary custody of the children.

On March 24, 2008, Mr. B. requested an administrative review asserting that he has been making monthly support payments, he provides medical insurance for the children and that he

¹ For the procedural history of this matter *see* Order Denying Motion to Dismiss, Granting Request for Waiver and Setting Supplemental Hearing dated October 1, 2008.

² Exhibit 1.

³ Exhibit 6 at 2, 8.

has the children 50% of the time.⁴ Mr. B. works two weeks on and two weeks off, and he has the children when he is off work. To complete the administrative review, CSSD requested additional information from the parties including “three notarized letters from friends or relatives that can confirm the child(ren) are or were in the home with you....”⁵

Ms. B. did not provide three letters. Rather she provided her own written statement confirming that Mr. B. pays the children’s medical insurance and disputing his assertion that he has the children 50% of the time.⁶ Ms. B. calculated that from July 1 – December 31, 2007, Mr. B. had the children a total of 42 nights out of a possible 182 nights or 23% of the time. Ms. B. calculated that from January 1, 2008 – March 18, 2008, Mr. B. had the children 32% of the time.

Using the dates provided by Ms. B., CSSD concluded that in 2007 Mr. B. had the children less than 30% of the time and that Ms. B. had primary custody of the children. In 2008, CSSD concluded Ms. B.’s dates established there was a 68%/32% shared custody arrangement. CSSD calculated child support on this basis and provided Mr. B. with deductions for insurance and retirement.⁷

On June 2, 2008, CSSD served the parties with an Amended Administrative Child Support and Medical Support Order ordering Mr. B. to pay ongoing monthly child support in the amount of \$1,093 beginning June 1, 2008, and arrears of \$7,238 from September 1, 2007 through May 31, 2008.

Mr. B. does not dispute the number of nights calculated by Ms. B. for 2007; rather, he believes child support for 2007 should be based on shared custody of the children. Mr. B. reasons that he was unable to have custody of the children when he was not working either because Ms. B. would not permit visitation or because he was setting up a home after he had moved out of the family house.

III. Discussion

The parties have stipulated that commencing January 1, 2008, they have a 50/50 shared custody arrangement and that child support should be calculated based on shared custody. This stipulation is supported by the testimony of the parties. On October 28, 2008 CSSD submitted a revised calculation for 2008 based on each parent having custody of the children 50% of the

⁴ Exhibit 7.

⁵ Exhibit 8 at 1; Exhibit 9 at 1.

⁶ Exhibit 10 at 1.

⁷ See generally Exhibit 12.

time.⁸ The revised calculation shows that Mr. B.'s child support obligation for J. and N. should be set at \$556 per month beginning January 1, 2008.

As for 2007, child support must be based on the actual custody arrangement between the parties.⁹ Therefore, even though Mr. B. desired to have his children 50% of the time, he did not. He had his children less than 30% of the time. For purposes of calculating child support, a parent has primary custody if the children reside with the other parent less than 30% of the time.¹⁰ Therefore, from September 1, 2007 through December 31, 2007, Ms. B. had primary custody of the children and CSSD correctly calculated the child support owing under Civil Rule 90.3(a) to be \$1,215 less any credits or debits to which Mr. B. is entitled.¹¹

IV. Conclusion and Order

1. G. W. B., Jr. is liable for child support for N. and J. in the amount of \$1,215 per month less any credits or debits to which he is entitled for the period from September 1, 2007 through December 31, 2007;

2. G. W. B., Jr. is liable for child support for N. and J. in the amount of \$556 per month less any credits or debits to which he is entitled effective January 1, 2008 and ongoing; and

3. All other provisions of the Amended Administrative Child Support and Medical Support Order of dated June 2, 2008, remain in effect.

DATED this 31st day of October, 2008.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

⁸ Exhibit 14.

⁹ 15 AAC 120.070(d).

¹⁰ Civil rule 90.3

¹¹ Exhibit 12 at 9. Mr. B.'s monthly child support payment for two children is \$1,215 per month. He is presently entitled to a monthly medical credit in the amount of \$43.34 per month. This results in a monthly child support payment for two children with debits and credits in the amount of \$1,172.

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 17th day of November, 2008.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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