

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

IN THE MATTER OF )  
 )  
 L. M. ) Case No. OAH-09-0127-CSS  
 ) CSSD Case No. 001146004  
\_\_\_\_\_)

**DECISION & ORDER**

**I. Introduction**

The obligor, L. M., appeals the January 16, 2009, decision of the Child Support Services Division (CSSD) to deny his request for modification review. Mr. M. appeared by telephone at a formal hearing held on March 19, 2009. Andrew Rawls represented CSSD. The custodian, Julie Reader, also appeared by telephone. The child is A. M. (DOB 00/00/92).

Mr. M.'s child support obligation is set at \$602 per month for one child for the period from September 1, 2008, through December 31, 2008. Support for 2009 and ongoing is set at \$578 per month for one child. Mr. M. is entitled to credit for benefits A. receives as Child Insurance Benefit (CIB) payments.

**II. Facts**

Mr. M.'s previous support obligation had been set at \$711 per month in May of 2007. Mr. M. testified that he became disabled in 2007, and since then has been living on disability benefits from the Veteran's Administration and Social Security. In 2008 Mr. M. also received \$2,940 in unemployment compensation. Mr. M. testified that he is now unable to work, and that disability benefits will constitute the bulk of his income for the foreseeable future.

At the hearing, CSSD inquired whether the parents had applied for CIB benefits on A.'s behalf. Both parents stated that they were unaware that such benefits might be available. At CSSD's request, the record was held open after the hearing, and CSSD assisted the parents in applying for Social Security disability dependent benefits, commonly known as children's insurance benefits or CIB, on A.'s behalf. The Social Security Administration determined that A. is entitled to \$8,543.50 in CIB benefits for the period from March, 2008, through March, 2009, and that she is entitled to receive \$690.00 per month thereafter.<sup>1</sup> The administration determined that Ms. Reader should be the representative payee.

Based on Mr. M.'s disability income, including A.'s CIB payments, and the unemployment compensation and permanent fund dividend payments that he has received,

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<sup>1</sup> Exhibit 9.

CSSD calculated that Mr. M.'s child support obligation should be \$602 per month for 2008 and \$578 per month for 2009 and ongoing.

### **III. Discussion**

Modification of an existing support order is generally appropriate if the new support amount would be fifteen percent more or less than the existing amount.<sup>2</sup> CSSD originally denied Mr. M.'s modification request because Mr. M. had not provided evidence of his current income. Having received a full accounting of Mr. M.'s income in 2008 and 2009, CSSD now agrees that modification is appropriate.

CSSD also asserts that Mr. M. should receive credit for CIB payments made to A. The Alaska Supreme Court has considered the effect of CIB payments on a child support obligation in *Pacana v. State*.<sup>3</sup> The *Pacana* court stated that

In *M.*<sup>[4]</sup> we held that "a divorced parent who is required to pay support to a child...is entitled to child support credit for social security payments the child receives on the parent's behalf." *M.* stated that Social Security retirement benefits are not considered welfare benefits; rather, they are earned when one participates in the Social Security system. We also held that the CIB payments should be counted as income to the noncustodial parent for purposes of calculating child support under Civil Rule 90.3. (Cites and footnotes omitted)

The *Pacana* court went on to hold that back CIB payments should be credited against the obligor's arrears.

The Supreme Court's decisions make clear that the CIB payments A. is receiving are not welfare or charity. They are the result of an insurance program that Mr. M. has been paying for during his working years through deductions from his paychecks, in order that he would be able to support himself and his children in the event of his disability. The support that Mr. M. is providing for A. through the insurance he has paid for is properly regarded as a credit to Mr. M.'s support obligation.

### **IV. Conclusion**

Mr. M. is entitled to modification of his support order. CSSD has correctly calculated Mr. M.'s support obligation to be \$602 per month for 2008 and \$593 per month for 2009 and ongoing. Mr. M. is entitled to a credit for CIB payments made to A.

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<sup>2</sup> Civil Rule 90.3(h)(1).

<sup>3</sup> *Pacana v. State*, 941 P.2d 1263, 1264-1265 (Alaska 1997).

<sup>4</sup> *Miller v. Miller*, 890 P.2d 574 (Alaska 1995).

**V. Order**

IT IS HEREBY ORDERED that Mr. M.'s child support obligation be set at the following monthly amounts for one child:

September – December, 2008:           \$602.00  
January, 2009 – Ongoing:               \$578.00

Mr. M. is entitled to credit for CIB payments to A. All other terms of the Amended Administrative Child and Medical Support Order of May 16, 2007, shall remain in effect.

DATED this 19th day of May, 2009.

By: Signed \_\_\_\_\_  
DALE WHITNEY  
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 4th day of June, 2009.

By: Signed \_\_\_\_\_  
Signature  
Dale Whitney \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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