

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

IN THE MATTER OF)
)
 M. B.) Case No. OAH-09-0190-CSS
) CSSD Case No. 001109823

DECISION & ORDER

I. Introduction

The obligor, M. B., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on February 27, 2009. Mr. B. appeared by telephone at a hearing held on June 9, 2009. The custodian of record, T. K., did not appear. Andrew Rawls represented CSSD. The child is K. (DOB 00/00/00).

Mr. B. has not demonstrated that CSSD's decision was in error, or that a variation in the standard child support calculation is necessary to avoid manifest injustice. The modified order is affirmed.

II. Facts

The existing support order set Mr. B.'s monthly support obligation at \$321 per month in November of 2002. After an electronically-generated review, Ms. K. returned a form requesting review. Based on wages reported to the Department of Labor for Mr. B., CSSD determined that he earned \$70,248.00 in 2008 in wages, plus PFD income. Based on this amount, CSSD set Mr. B.'s support obligation at \$910 per month for one child.

Mr. B. worked for the Postal Service all through 2008, and his salary and employment situation have not changed since then. After the hearing, Mr. B. submitted pay stubs for the 10th, 11th, and 12th pay periods in 2009. These pay stubs show an average of \$2,269.25 in gross pay per period, plus an average COLA, or Cost of Living Adjustment, of \$459.25, bringing his average total income per pay period to \$2,728.50. If Mr. B. earned this amount each of the 26 pay periods, his total annual income would be \$70,941.00. CSSD asserts that, according to the Department of Labor, Mr. B. has earned the following amounts per quarter:

| | |
|--------------------------------|-------------|
| 1 st quarter, 2008: | \$18,193.00 |
| 2 nd quarter, 2008: | \$16,198.00 |
| 3 rd quarter, 2008: | \$18,830.00 |
| 4 th quarter, 2008: | \$17,046.00 |
| 1 st quarter, 2009: | \$19,579.00 |

These amounts total \$70,267.00 for all of 2008; the higher amount for the first quarter of 2009 indicates the possibility that Mr. B. will earn more in 2009 than he did in 2008. In addition to his Postal Service income, Mr. B. receives a permanent fund dividend.

At the hearing, Mr. B. described his household financial situation. Mr. B. is married and has two children at home aged three and six years old; both of these children are younger than K. Mr. B.'s wife does not work. Mr. B. detailed the household's monthly expenses including rent, food, and utilities; added together, these range approximately from \$1833 to \$2313 per month. The household supports one vehicle, a 1999 Ford Explorer for which Mr. B. owes about \$3000 and pays \$285 per month. Mr. B. estimates he pays \$200 to \$300 per month for gasoline, an average of \$100 to \$200 for vehicle maintenance, and \$79 per month for car insurance. He estimated expenses of \$120 per month for entertainment and personal care items. Mr. B.'s wife spends about \$120 per month for cigarettes. In addition to these expenses, Mr. B. listed a collection of credit card and consumer loan debts. Mr. B. estimated that together the principal on these debts comes to at least \$15,000. Mr. B. makes payments on some of these accounts; some are in default, and Mr. B. makes payments as he is able to, and is slowly paying down the amount he owes.

III. Discussion

At a formal hearing, the person requesting the hearing has the burden of demonstrating that the division's decision is in error.¹ According to Civil Rule 90.3(a), in a primary custody situation child support for one child is calculated as twenty percentage of the obligor's adjusted annual income. The modified order was based on gross income of \$72,317 (\$70,248.00 in wages plus \$2,069.00 in PFD income). After adjustments for tax, social security, and unemployment insurance payments, Mr. B.'s adjusted income was calculated at \$54,601.04 per year, resulting in a child support obligation of \$910 per month for one child.² Adjustments are also allowed for support of older children of a previous relationship; because the two children that Mr. B. supports in his household are younger than K., a deduction for their support is not allowed under the rule.

Changes to the standard formula may be made upon a showing by clear and convincing evidence that manifest injustice would result if the amount of support were not varied from the standard formula. Adding all of the monthly expenses for Mr. B.'s household, using the highest amount for expenses that vary, but excluding the cost of cigarettes for Mr. B.'s wife and payments on the \$15,000 of consumer debt, results in monthly expenses of \$3297, or \$39,564 per year. Adding \$10,920.00 per year for support of K. results in expenses of about \$50,000 per

¹ 15 AAC 05.030(h).

² Exhibit 4, page 6.

year, still less than Mr. B.'s adjusted annual income. While it might be necessary for Mr. B. to carefully watch his household's budget, Mr. B. has not presented clear and convincing evidence that manifest injustice will result if his support obligation is not varied from the standard formula.

IV. Conclusion

CSSD has correctly calculated Mr. B.'s support obligation by applying Civil Rule 90.3(a) to the best available information Mr. B. has not met his burden of proving that CSSD's decision was in error.

V. Order

IT IS HEREBY ORDERED that the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on February 27, 2009 is AFFIRMED.

DATED this 31st day of July, 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 18th day of August, 2009.

By: Signed
Signature
Dale Whitney
Name
Administrative Law Judge
Title

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