

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

IN THE MATTER OF: )  
 )  
D. B. )  
 )  
\_\_\_\_\_ ) OAH No. 09-0283-CSS  
CSSD Case No. 001115472

**DECISION AND ORDER**

**I. Introduction**

This case concerns the obligation of D. B. for the support of Z. B. (DOB 00/00/1996). The custodian of record is K. B.

On May 14, 2003, the Child Support Services Division issued an amended administrative child support order establishing an ongoing support obligation of \$233 per month. In November, 2008, both parties requested modification. On April 24, 2009, the division issued a modified administrative support order setting ongoing support at \$453 per month effective December 1, 2008.

Mr. B. filed an appeal and the case was referred to the Office of Administrative Hearings. The assigned administrative law judge conducted a telephonic hearing on June 3, 2009. Both Mr. B. and Ms. B. participated. Erin Briann represented the division.

Mr. B.'s presumptive support obligation is \$259 per month. Because this is not 15% greater or less than the existing support order, the requests for modification are denied.

**II. Facts**

D. B. has four children by four different mothers: A. (1993), Z. (1996), B. (1999) and C. (2001). All four children are subject to child support orders. The Child Support Services Division is enforcing orders established in Alaska for three children: A. (CSSD No. 001044145) with arrears in the amount of \$6,417.35 owed to the state;<sup>1</sup> Z. (CSSD No. 001115474), currently set at \$233 per month, with arrears of \$19,900.91 owed to the

custodian;<sup>2</sup> and B. (CSSD No. 001100268) in the amount of \$442 per month, with arrears in the amount of \$33,226.45.<sup>3</sup> North Dakota is enforcing the order for C., in the amount of \$168 per month, with arrears in the amount of \$4,895.72 owed to the custodian (North Dakota No. 40-04-C-00151).<sup>4</sup> Mr. B.'s current total ongoing support obligation is \$843 per month. Monthly interest is accumulating at the rate of \$253.32 per month.<sup>5</sup> Mr. B. is subject to withholding orders totaling support totaling \$951.60 per month, including \$442 for B., \$233 for Z., \$168 for C. and \$108.60 for arrears.<sup>6</sup> The amount currently being withheld from his paychecks is \$878.36 per month.<sup>7</sup> Mr. B.'s total arrears are \$64,440.43. During the first quarter of 2009, while Mr. B. was unemployed, his arrears increased by approximately \$3,279. Since April 1, while he has been fully employed, under his current support and withholding orders, Mr. B.'s arrears have increased by approximately \$217.96 every month.<sup>8</sup>

Mr. B. lives in Montana. In 2006, he worked as a warehouseman for W. M. and M. P. His total wages in 2006 were \$19,953. In March, 2007, Mr. B. got a job with K. R. working on a rock crusher, with full time employment, plus some overtime, throughout the year. His total wages in 2007 were \$32,035. The road crusher shut down on December 12, 2008, and Mr. B. lost his job. His total wages in 2008 were \$34,477. Mr. B. was unable to find work until March 30, 2009, when he got another job with K. R. as part of a road construction crew. His normal wage is \$16.50 per hour, but at the time of the hearing he was working on a job paying Davis-Bacon wages of \$19.07-19.26 per hour. He earns overtime depending on work loads and is subject to layoff when work is low. Through May 17, Mr. B.'s total 2009 wages were \$7,505.42, which is equivalent to total annual wages of \$19,905.87.

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<sup>1</sup> Ex. 13. The order for A. is set at \$168 per month, but no ongoing support is being collected.

<sup>2</sup> Ex. 14.

<sup>3</sup> Ex. 15.

<sup>4</sup> Ex. 16.

<sup>5</sup> Ex. 13-16.

<sup>6</sup> See Ex. 7, pp. 5-7.

<sup>7</sup> The amount withheld less than the total amount of the withholding orders, apparently because the orders limited withholding to 50% of the employee's aggregate disposable weekly earnings. See Ex. 7, pp. 5-7.

<sup>8</sup> This is the difference between Mr. B.'s current total ongoing support obligation (\$843) plus interest on arrears (\$253.32) and his total monthly payments (\$878.36).

Mr. B. lives with his partner, who is the mother of a ten year old child. She is employed and earns about \$1,200 per month (gross), and she receives child support in the amount of \$350 per month.

Mr. B.'s monthly net income in 2008, after taxes but before child support payments, was about \$2,462. The total monthly household reasonable and necessary living expenses are about \$1,491-1,601, including rent (\$525), food (\$300-400), utilities (\$236), personal care (\$70), and transportation (\$360-370).<sup>9</sup> After paying a one-half share of the reasonable and necessary household living expenses, in 2008 Mr. B. had approximately \$1,661-1,716 available each month in 2008 for all other expenses, including the support of his children and payments on arrears. In 2009, he will have approximately \$492-548 available each month for all other expenses, including the support of his children and payments on arrears.<sup>10</sup>

K. B. has two children, both of whom live with her: Z. and M., born in January, 2009. There are no other household members. Ms. B. is unemployed; she receives public assistance (\$923 per month), food stamps (\$438 per month) and \$50 per month passed through by the division from the child support it collects from Mr. B. (the remainder of the ongoing child support collected by the division on the two Alaska child support orders is applied to the public assistance benefits paid to Ms. B.). Ms. B. and her children live in rented premises (\$950 per month). The monthly household expenses include transportation (\$230).<sup>11</sup> K. B. worked, primarily doing office work, from the time she was a teenager until September, 2007. She anticipates returning to work in the summer of 2009, after M. is six months old.

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<sup>9</sup> In addition to these reasonable and necessary living expenses, the household has other monthly expenses, including television (\$56), Internet (\$50), entertainment (\$20), and dining out (\$50-60).

<sup>10</sup> Mr. B.'s adjusted annual income in 2009 is anticipated to be \$15,524.64. Appendix A. This is \$1,293.72 per month. His 50% share of the total household expenses is \$745-\$801. His monthly available income for child support and all other expenses is the difference between his monthly adjusted income and his share of the reasonable and necessary household expenses ( $\$1,293.72 - \$745 = \$548.72$ ;  $\$1,293.72 - \$801 = \$492.72$ ).

<sup>11</sup> Ms. B. testified that her 1994 Chevrolet Suburban is paid for. She stated she has monthly expenses for gas (\$16), maintenance (\$10), and insurance (\$60), which total \$230 per month.

### III. Discussion

#### A. Presumptive Support Obligation

For one child, a parent's presumptive support obligation is 20% of that parent's adjusted annual income,<sup>12</sup> that is, income after allowable deductions for such things as taxes and contributions to a retirement plan.<sup>13</sup> In this case, the division initially issued a modified order in the amount of \$435, based on total income of \$34,377 and adjusted annual income of \$26,109.04. The division provided deductions for income tax (\$279.30) and social security tax (\$219.79), and an unspecified deduction (\$198.24).<sup>14</sup> On appeal, Mr. B. provided his two most recent pay stubs, which showed year-to-date wage total wages of \$7,506.42 through May 17, 2009, Montana income tax of \$339 (4.5%), and contributions to a retirement plan of \$225.17 (3.0%).<sup>15</sup> Based on the additional information, the division provided additional monthly deductions of \$86.19 for contributions to retirement, and \$143.65 for Montana state income tax.<sup>16</sup> With those deductions, the division calculated Mr. B.'s support obligation as \$428 per month.

Mr. B.'s year-to-date income through May 17, 2009, extrapolates to annual wages of only \$19,905.87, only 58% of his 2008 income. The division used Mr. B.'s 2008 income, rather than 2009 year-to-date income, to calculate Mr. B.'s 2009 anticipated income. At the hearing, Mr. B. testified that during 2007 and 2008, he had been working full time at a rock crusher, but that the rock crusher ceased operations on December 12, 2008, and he did not find a new job until March 30, 2009. Mr. B. testified that his current job is seasonal, which his employer confirmed, and that it would shut down in the fall. The preponderance evidence is that Mr. B.'s 2009 income will be substantially less than his 2008 income. Mr. B.'s year-to-date income, extrapolated to a full year, is the most direct, relevant, and persuasive evidence of his anticipated 2009 income. Based on anticipated 2009 income of \$19,905, Mr. B.'s presumptive support obligation is \$259 per month, as shown in Appendix A.

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<sup>12</sup> 15 AAC 125.070(a); Civil Rule 90.3(a)(2)(A).

<sup>13</sup> 15 AAC 125.070(a); -.065; Civil Rule 90.3(a)(1).

<sup>14</sup> Ex. 5.

<sup>15</sup> Ex. 7, p. 4.

<sup>16</sup> Ex. 9.

B. Unusual Circumstances

To be subject to four separate child support orders is an unusual circumstance. Strict application of the child support formula in such cases may not be appropriate if the obligor's monthly available cash income is insufficient to meet current reasonable and necessary living expenses and the child support obligation for all children under the formula. In that situation, an alternative approach may be appropriate.<sup>17</sup> In this particular case, however, there is no manifest injustice. Mr. B.'s total income in 2009 as a whole will likely be insufficient for him to meet his existing annual child support obligations under all three child support orders while at the same time paying for his reasonable and necessary annual living expenses. However, Mr. B. has requested modification of the existing support order of \$442 for B., and a reduction of that order to reflect his anticipated 2009 annual income would reduce his total annual obligation to an amount that is not manifestly unjust.<sup>18</sup> In the meantime, pending modification of the order for B., Mr. B.'s current monthly income is sufficient for him to meet his current monthly combined support obligation.

**IV. Conclusion**

The presumptive support obligation has not changed by at least 15%, and the request for modification should therefore be denied.

**ORDER**

1. The request for modification is DENIED.
2. D. B.'s ongoing child support in this case remains at \$233 per month.
3. The division's Modified Administrative Child Support and Medical Support Order dated April 24, 2009, is overturned.

DATED: July 20, 2009

Signed  
\_\_\_\_\_  
Andrew M. Hemenway  
Administrative Law Judge

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<sup>17</sup> See, e.g., In Re M.G., OAH No. 06-0288-CSS (Department of Revenue, October 19, 2006) (determining support as if all children were in a single family, and dividing support equally, adopting method set out in Civil Rule 90.3(i) for cases of third party custody).

<sup>18</sup> If Mr. B.'s obligation for B. were modified to reflect his anticipated 2009 income is determined in this case, that order would be reduced to \$212 per month. See Appendix B. The combined total for all three orders would be \$613 per month (\$233 + \$212 + \$168 = \$613). Although this is about \$100 a month more than his current monthly available income, it is not a manifestly unjust amount in light of the circumstances.

## 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 11th day of August, 2009.

By: Signed \_\_\_\_\_  
Signature  
Andrew M. Hemenway \_\_\_\_\_  
Name  
Administrative Law Judge \_\_\_\_\_  
Title

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