

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

IN THE MATTER OF:)

B. J. B.)

OAH No. 09-0516-CSS

CSSD No. 001120338

DECISION AND ORDER

I. Introduction

This matter involves the Obligor B. J. B.' appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 8, 2009. The Obligee child is C., who is 7 years old.

The formal hearing was held on October 15, 2009. Both Mr. B. and the custodian, L. M. B., appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The record closed on November 12, 2009.

Based on the record as a whole and after due deliberation, CSSD's September 8, 2009, Modified Administrative Child Support and Medical Support Order that modified Mr. B.' child support to \$350 per month, effective February 1, 2009, is vacated. Mr. B.' child support shall remain at \$50 per month based on a finding that he is disabled from work at this time.

II. Facts

A. History

Mr. B.' child support for C. was set at \$50 per month in June 2003.¹ Ms. B. requested a modification on January 14, 2009.² On January 28, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. B. did not provide income information.⁴ On September 8, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. B.' modified ongoing child support at \$350 per month,

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Pre-hearing brief at pg. 1.

effective February 1, 2009.⁵ On September 24, 2009, Mr. B. filed an appeal and requested a formal hearing.⁶

B. Material Facts

Mr. B. is a heavy equipment mechanic. His most recent employer was PGS Onshore, Inc., where he worked from February 2007 through September 2008 on the North Slope and earned \$12 per hour.⁷ He quit his job on September 18, 2008 because the physical demands of the job were too difficult for him. He has not worked since he left his job at PGS Onshore.

Mr. B. was diagnosed with rheumatoid arthritis in August 2003 and degenerative disc disease in April 2007.⁸ He continued to be employed, however, but the physical demands of the work became ever more difficult for him. Mr. B. applied for Social Security disability on October 21, 2008 based on his diagnosis of rheumatoid arthritis and disc disease.⁹ His application was denied so he retained the services of an attorney specializing in disability cases and requested a hearing before a Social Security administrative law judge.¹⁰ As of the date of his child support hearing, that appeal was still pending. On November 19, 2009, Mr. B. sought treatment at the MatSu Regional Urgent Care Clinic, where after an examination, Dr. Stephen M. Wahl stated in Mr. B.' medical records that:

This gentleman does have significant limitation from his illness. It is unclear how much of this could be improved with further therapy. I think at this time, he is *completely disabled from work*. Rheumatologic and orthopedic follow-up are recommended.¹¹

Mr. B. began receiving interim cash assistance of \$280 per month and food stamps valued at \$243 per month in November 2008.¹² He lives with his girlfriend, F., who is receiving unemployment benefits of \$178 per week. They live in her mother's trailer in Chickaloon and pay for utilities that total about \$160-\$260 per month. They do not currently have a useable vehicle so when it is necessary for them to go somewhere they borrow F.'s mother's car.

⁵ Exh. 5.

⁶ Exh. 6.

⁷ Exh. 7 at pg. 8.

⁸ Exh. 7 at pgs. 13-20, 24.

⁹ Exh. 7 at pg. 29.

¹⁰ Exh. 7 at pgs. 39-41.

¹¹ Exh. 7 at pg. 52 (emphasis added).

¹² Exh. 7 at pgs. 2, 25.

Gasoline for the car costs \$75-\$100 per month. Mr. B. also has insurance on a 1985 Chevrolet Blazer that costs \$122 per month, but he is going to cancel that insurance because the Blazer is not currently running. He also spends \$200 per month on personal care items and tobacco. Mr. B. has outstanding medical bills of approximately \$4,000, but he is not paying them at this time.

Ms. B. is a personal care attendant, but she is currently unemployed from Access Alaska, where she earned \$14.75 per hour. She has applied with another employer but was not hired. She receives unemployment benefits of \$518 every two weeks and food stamps valued at \$780 per month. Ms. B. has two other children in the home who are 11 and 9 years of age. She does not receive child support for them but is hoping to locate their other parent in an attempt to get the case reopened. Her father, who is a disabled veteran, also lives with her and she provides his direct care. He receives \$1,450 in VA and Social Security disability payments.

Ms. B.'s regular household expenses include \$700 for rent, including utilities; \$250 for food in addition to her food stamps; \$220 for a car payment; \$300 for gasoline; \$197 for vehicle insurance; \$150 for personal care items; \$200 for tobacco; and \$12 for medicine copayments. She has several outstanding bills of a few hundred dollars, but could not identify the specific amounts and is not paying them at this time.

In July 2009, Ms. B. needed assistance with housing so she asked Mr. B. if she could stay in his home; he agreed. During her stay, she observed him building a sauna for himself and F. She testified he cut down cottonwood trees with a chainsaw and carried them to a location where he peeled the bark with a peeler. She also saw him go up and down a ladder in order to work on getting indoor plumbing working for the trailer.

III. Discussion

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”¹³ If the newly calculated child support amount is at least 15% higher or lower than the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” has been established, and CSSD will proceed with the modification.¹⁴ If the newly calculated child support is not at least 15% more or less than the previous order, Civil Rule 90.3 does not require a modification of the obligor’s child support amount.

¹³ AS 25.27.190(e).

¹⁴ 15 AAC 125.321(b).

A. *Disability*

The obligor parent has the burden of proving his or her earning capacity.¹⁵ An obligor who claims he or she cannot work or pay child support because of a disability or similar impairment, must provide sufficient proof of the medical condition such as testimony or other evidence from a physician.¹⁶

Mr. B. has proven by a preponderance of the evidence that he is disabled for child support purposes at this time. He was diagnosed with rheumatoid arthritis in August 2003 and degenerative disc disease in April 2007. In addition, a physician has examined him and determined Mr. B. is “completely” disabled from work at this time.

Upon reviewing his medical records after the hearing, CSSD conceded that Mr. B. is disabled and recommended that his child support obligation remain at \$50 per month. However, C.’s other parent, Ms. B., does not agree at all with the doctor’s finding that Mr. B. is disabled. She testified that she had observed him cutting trees and peeling them for a sauna, and climbing up and down ladders in order to work on the plumbing for the trailer where he lives. Ms. B.’s testimony was credible and Mr. B. did not challenge it regarding the physical nature of his activities, only as to whether he was, in fact, building a sauna.

While Ms. B.’s testimony raises concerns about the extent of Mr. B.’ physical capacity, it should be noted that Dr. Wahl reported that Mr. B. is disabled from work, not from all physical activity. Mr. B. is a heavy equipment mechanic by trade. This work obviously requires substantial strength and hand dexterity, which, according to his medical records, is now significantly reduced for Mr. B. It is not unreasonable to conclude that Mr. B. is still able to perform some other physical tasks, like going up and down a ladder, even while he cannot perform the tasks necessary for his job.

As a result of the finding that Mr. B. is disabled for child support purposes, his child support should be calculated based on his actual income, which at this point is the PFD. His child support may not be based on the interim assistance he receives because it is a “means based income” similar to public assistance.¹⁷ A child support amount calculated from the 2009 PFD of

¹⁵ *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

¹⁶ *Id.* at 1371.

¹⁷ *See* Civil Rule 90.3, Commentary III.A.

\$1,305 results in a child support amount of \$50 per month. Since this is the amount of his pre-modification order, Mr. B.' child support should remain unmodified at \$50 per month.

B. Unusual Circumstances/Good Cause

As part of his appeal, Mr. B. also requested a variance from the support amount calculated under Civil Rule 90.3. A party may obtain an increase or reduction from the support amount calculated, but only if the party shows that "good cause" exists for the variation. Because Mr. B.' child support shall remain at \$50 per month, the inquiry regarding his claim of financial hardship is moot. A primary custody child support amount may not be reduced below \$50 per month, so a variance is not possible in his case.

IV. Conclusion

Mr. B. met his burden of proving by a preponderance of the evidence that he is disabled for child support purposes. His child support should be calculated from his actual income, which yields a support amount of \$50 per month. CSSD's September 8, 2009, Modified Administrative Child Support and Medical Support Order that modified Mr. B.' child support to \$350 per month, effective February 1, 2009, is vacated. Mr. B.' child support should remain at \$50 per month.

V. Child Support Order

- CSSD's September 8, 2009, Modified Administrative Child Support and Medical Support Order that modified Mr. B.' child support to \$350 per month, effective February 1, 2009, is vacated;
- Mr. B.' child support shall remain at \$50 per month based on a finding that he is disabled from work at this time.

DATED this 30th day of December, 2009.

By: Signed
Rebecca L. Pauli
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 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 19th day of January, 2010.

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

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