

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

IN THE MATTER OF:)

W. B. JR.)

) OAH No. 09-0571-CSS

) CSSD No. 001046158

DECISION AND ORDER

I. Introduction

The obligor, W. B. Jr., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 4, 2009. The obligee child is C., who is 16 years of age.

The hearing was held on November 12, 2009. Both Mr. B. and the custodian, E. M. B., participated by telephone. Erinn Brian, Child Support Specialist, appeared for CSSD. The hearing was recorded and the record closed on November 12, 2009.

Based on the record and after careful consideration, Mr. B.'s child support is modified to \$864 per month, effective March 1, 2009.

II. Facts

A. History

Mr. B.'s child support obligation for C. was previously established at \$735 per month in May 2007.¹ On February 9, 2009, Ms. B. initiated a modification review of the order.² On February 25, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Both parties provided income information.⁴ On September 4, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. B.'s modified ongoing child support at \$972 per month, effective March 1, 2009.⁵ Mr. B. filed an appeal on October 14, 2009, asserting CSSD's calculations were incorrect.⁶

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Pre-hearing brief at pg. 1; Exhs. 4 & 5.

⁵ Exh. 6.

⁶ Exh. 7.

B. Material Facts

Mr. B. and Ms. B. are the parents of C., who is currently 16 years old. C. lives with Ms. B.

Mr. B. is a member of the federal civil service. CSSD estimated his 2009 earnings at \$52,055.64, based on his March 6, 2009, paystub.⁷ Mr. B. did not object to this estimate. In addition to his earnings from wages, Mr. B. is a retired military member and receives taxable retirement income of \$754.50 per month, which equals \$8,402.92 annually.⁸ He also receives disability pay of \$644 per month, or \$7,724 per year, which is nontaxable.⁹ These figures, when inserted into CSSD's online child support calculator,¹⁰ yield a child support amount of \$864 per month.¹¹

III. Discussion

Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on his or her "total income from all sources." In a modification situation, if the child support amount calculated from an obligor's current income is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that "good cause and material change in circumstances" has occurred such that the order may be modified. Mr. B.'s child support was previously set at \$735 per month, so any increase over \$845.25 meets the 15% threshold amount and allows the modification.¹² This modification is effective March 1, 2009.¹³

Mr. B. appealed CSSD's modification order of \$972 per month for two reasons: CSSD overestimated his total income by including his retirement in the calculation twice, and the agency did not give him a medical credit to reflect the health insurance he provides for C.¹⁴ After a lengthy hearing, it was determined that Mr. B. is correct that CSSD overestimated his

⁷ Exh. 8 at pg. 5.

⁸ Exh. 7 at pg. 5.

⁹ *Id.*

¹⁰ <https://webapp.state.ak.us/cssd/guidelinecalc.jsp>

¹¹ Attachment A.

¹² $\$735 + 15\% = \$864.$

¹³ A modification is effective beginning the month after the parties are served with notice that a modification has been requested. 15 AAC 125.321(d). CSSD sent the parties a notice of the modification on February 25, 2009, so the modification is effective March 1, 2009. *See* Exh. 3.

¹⁴ The issue of the medical credit was referred to Mr. B.'s caseworker.

income. His income figures have been corrected to reflect his September 3, 2009, retiree account statement, and his modified child support has been recalculated at \$864 per month.

IV. Conclusion

Mr. B. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect, as required by 15 AAC 05.030(h). Mr. B.'s modified ongoing child support obligation is now correctly calculated at \$864 per month, effective March 1, 2009. This amount should be adopted.

V. Child Support Order

- Mr. B.'s child support is modified to \$864 per month, effective March 1, 2009, and ongoing;
- All other provisions of CSSD's September 4, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 16th day of December, 2009.

By: Signed _____
Kay L. Howard
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 4th day of January, 2010.

By: Signed _____
Signature
Kay L. Howard _____
Name
Administrative Law Judge _____
Title

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