

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

IN THE MATTER OF:)	
)	OAH No. 09-0635-CSS
K. L. B.)	CSSD No. 001136189
_____)	

DECISION AND ORDER

I. Introduction and Procedural Background

This case involves the Obligor K. L. B.'s appeal of the Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in this matter on November 3, 2009.¹ This order increased Mr. B.'s monthly child support obligation from \$279 per month set in 2006 to \$572 per month effective May 1, 2009. Mr. B. believed that the child support calculation is too high because he was recently divorced and pays support for a subsequent child and requested a formal hearing on appeal. The obligee child is K., four years old. The custodian of record is C. A. M.

After Mr. B. appealed, CSSD provided him with a Formal Hearings Expense Checklist for Hardship. As requested by Mr. B., a hearing was held December 21, 2009. Mr. B. did not participate.² Andrew Rawls, Child Support Specialist, representing CSSD and Ms. M. participated by phone. Following the hearing, the record was left open until December 31, 2009, to provide Mr. B. with an opportunity to show reasonable cause for his failure to participate.³ The record closed without further input from Mr. B.

II. Facts

In October 2006, Mr. B. was ordered to pay child support in the amount of \$297 per month effective July 2006.⁴ This amount remained unchanged until Ms. M. requested modification of the 2006 Child Support Order.⁵ On April 14, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order and, as requested by CSSD, Mr. B.

¹ Exhibit 5.

² Mr. B. was called at both phone numbers of record. The phone was answered by voice mail and a message was left informing him that the record would remain open for 10 day.

³ "If a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear." 15 AAC 05.030(j).

⁴ Exhibit 1.

⁵ Exhibit 2.

provided income information.⁶ Using this information CSSD calculated Mr. B.'s child support for one child to be \$572 per month effective May 2009 and ongoing.⁷

Mr. B. is in the military. The gross income figure used by CSSD to calculate child support, \$49,374.24, was the total of Mr. B.'s Pay, Basic Allowance for Housing, Basic Allowance for Subsistence plus the Alaska Permanent Fund. Deductions included income and unemployment tax, social security as well as \$585 for child support for a prior child and \$186.96 for retirement. This resulted in an adjusted annual income totaling \$34,315.32.⁸ Using these amounts, CSSD determined that Mr. B.'s monthly child support obligation for one child is \$572.

In support of his appeal, Mr. B. submitted a written statement that he was recently divorced which has severely impacted his finances. He also provided a copy of a parenting plan and child support obligation for a child born after K.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ Child support calculated under Civil Rule 90.3 from an obligor's actual income is presumed to be correct. An obligor parent may obtain a reduction in the amount calculated, but only if he or she shows that "good cause" exists for the reduction. In order to establish "good cause," the claimant must prove by clear and convincing evidence that "manifest injustice would result if the support award were not varied."¹⁰ If the parent proves that "unusual circumstances" exist in his or her case, this may be sufficient to establish "good cause" for a reduction in the support award:

Good cause may include a finding . . . that unusual circumstances exist which require variation of the award in order to award an amount of support which is just and proper for the parties to contribute toward the nurture and education of their children¹¹

The obligor has the burden of proving his or her earning capacity and establishing that he or she cannot meet their child support obligation.¹² From the documents submitted it appears the crux of Mr. B.'s argument is that modification of K.'s child support will put him into arrears and interfere with his ability to meet his financial obligation to his subsequent child. Unfortunately, Mr. B. did not participate in the hearing and presented no sworn testimony.

⁶ Exhibits 3, 4.

⁷ Exhibit 5.

⁸ Exhibit 5 at 6.

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹⁰ Civil Rule 90.3(c).

¹¹ Civil Rule 90.3(c)(1)(A).

¹² *Kowalski v. Kowalski*, 806 P.2d 1368, 1371 – 1372 (Alaska 1991).

The obligation to support subsequent children is not considered good cause to vary child support except in limited circumstances not established here.¹³ Mr. B. did not appear at hearing and the documents submitted with his request for an appeal are insufficient to support a finding that by clear and convincing evidence manifest injustice would result if the support award were not varied. Accordingly, his appeal should be denied.

IV. Conclusion

Mr. B. has not established by clear and convincing evidence that his request for a hardship variance should be granted.

V. Child Support Order

1. K. L. B.'s support obligation is \$572 per month effective May 1, 2009, and ongoing.
2. All other provisions of the Modified Administrative Child Support and Medical Support Order issued November 3, 2009, remain in full force and effect.

DATED the 12th day of January, 2010.

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 29th 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.]

¹³ Commentary Civil Rule 90.3 VI.B; 15 AAC 125.075(a)(2)(F) (variance may be appropriate where failure to vary child support would cause a substantial hardship to "subsequent" children).