

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

IN THE MATTER OF:)

A. F. B. II)

) OAH No. 10-0405-CSS
) CSSD No. 001145093 &
) 001166148

DECISION AND ORDER

I. Introduction

The obligor, A. F. B. II, appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in his case on May 22, 2010. The obligee child is A., age 5.

The hearing was held on September 2, 2010. Mr. B. participated by telephone. The other party is the State of Alaska. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on September 30, 2010.

Based on the record and after due deliberation, Mr. B.'s child support is modified to \$257 per month, effective April 1, 2010.

II. Facts

A. Background

Mr. B.'s child support obligation for A. was set at \$356 per month in June 2007.¹ He requested a modification review on March 23, 2010.² On March 30, 2010, CSSD notified the parties that a modification review had been requested.³ On May 22, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. B. did not document his income.⁴ At CSSD's suggestion, Mr. B. submitted another petition for modification, then filed an appeal.⁵ Before the hearing, CSSD submitted a revised draft child support calculation for 2010 based on Mr. B.'s income in the previous four quarters.⁶

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exhs. 5-8.
6 Exhs. 9-10.

At the hearing, CSSD stipulated that any modification of Mr. B.'s child support obligation should be effective on April 1, 2010, based on his initial petition for modification and CSSD's notice to the parties.

B. Material Facts

Mr. B. lives in No Name City. An IRS tax return transcript shows that his 2009 wages were \$17,918.⁷ According to the Alaska Department of Labor and Workforce Development, Mr. B.'s most recent wages total \$16,272.⁸ These were reported for the period of time from the third quarter of 2009 through the second quarter of 2010.

CSSD prepared a draft child support calculation of \$257 per month for one child using the Department of Labor information from Mr. B.'s last four quarters of income.⁹ Mr. B. agreed to this amount during the hearing.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁰ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. As the person who filed the appeal in this case, Mr. B. has the burden of proving by a preponderance of the evidence that CSSD issued the Notice of Denial of Modification Review in error.¹¹

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." CSSD initially denied Mr. B.'s request for modification for the reason that he did not adequately document his income. However, Mr. B.'s most recent income has been established and a revised child support calculation of \$257 per month results from his income. This figure is more than a 15% change from the prior amount of \$356 per month, so Mr. B.'s child support obligation should be modified.

Mr. B. accepted CSSD's calculation of \$257 per month for the modification amount, but the obligor's primary issue on appeal concerns his arrears. Mr. B. claims that it was never his

⁷ Exh. 8 at pg. 5.

⁸ Exh. 9.

⁹ Exh. 10 at pg. 2.

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 05.030(h).

intention that A. be in a foster care setting, asserting he has an agreement with the B. S. Home, where A. is staying. As a result, Mr. B. argues he should not be liable for the arrears that have accrued in this case because A. should not have received foster care services.

In response, CSSD argued that Mr. B. was served with an administrative child support order for \$356 per month in April 2007 and he is liable for the child support amount entered in his case at that time. Mr. B. claims he did not receive the child support order, but CSSD filed a copy of a green card that shows Mr. B. signed for CSSD's order on April 6, 2007.¹² Mr. B.'s claim that he did not know about the order is thus not credible and he is bound by its provisions.

According to CSSD's regulations, a modification is effective the first day of the month following CSSD's notice to the parties that a modification has been requested.¹³ After Mr. B. requested a modification in March 2010, CSSD sent out a notice of the request on March 30, 2010. As a result, the modification is effective as of April 1, 2010, and Mr. B.'s child support may be modified as of that date. However, the administrative law judge may not take any action in Mr. B.'s case prior to April 1, 2010, as that would constitute an impermissible retroaction modification.¹⁴

IV. Conclusion

Mr. B. met his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was issued in error. Using Mr. B.'s actual income results in a correct child support amount of \$257 per month. This figure should be adopted.

V. Child Support Order

- CSSD's May 22, 2010, Notice of Denial of Modification Review is vacated;
- Mr. B. is liable for modified ongoing child support for A. in the amount of \$257 per month, effective April 1, 2010;

¹² Exh. 11.

¹³ 15 AAC 125.321(d).

¹⁴ See Civil Rule 90.3(h)(2).

- All other provisions of the prior order in effect in Mr. B.'s case, the Amended Administrative Child and Medical Support Order dated May 22, 2007, remain in full force and effect.

DATED this 21st day of October, 2010.

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 8th day of November, 2010.

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

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