

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

IN THE MATTER OF:)

R. J. P.)

OAH No. 09-0681-CSS

CSSD No. 001102913

DECISION AND ORDER

I. Introduction

The custodian, V. M. N., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. P.'s case on November 25, 2009. The children are N., O. and Z., who are 17, 15 and 13 years of age, respectively.

The formal hearing was held on January 11, 2010. Both Mr. P. and Ms. N. appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 26, 2010.

Based on the record and after careful consideration, Mr. P.'s modified child support is set at \$66 per month, effective June 1, 2009.

II. Facts

A. Procedural Background

Mr. P.'s child support obligation for N., O. and Z. was set at \$335 per month in 2002.¹ On April 24, 2009, Mr. P. requested a modification review.² On May 20, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. P. provided child support guidelines affidavits.⁴ On November 25, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. P.'s modified ongoing child support at \$50 per month for three children, effective June 1, 2009.⁵ Ms. N. filed an appeal

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.

on December 10, 2009, asserting Mr. P. can get a job to pay his support obligation and that he also receives Native corporation dividends that can go toward his child support obligation.⁶

B. Material Facts

The facts are not disputed. Mr. P. has been incarcerated since March 1, 2009, and is tentatively scheduled to be released on December 5, 2012.⁷ Mr. P. has not earned any income since March 2009, but he does have 200 shares of Native corporation stock.⁸ In 2009, he received \$12 per share, for a total of \$2,400.⁹ This income amount, when inserted into CSSD's child support calculator, yields a child support amount of \$66 per month for three children.¹⁰

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹² 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. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹³ The person who filed the appeal, in this case, Ms. N., has the burden of proving by a preponderance of the evidence that the agency's child support determination is incorrect.¹⁴

In response to the petition for modification, CSSD calculated Mr. P.'s modified child support at \$50 per month, based on an income figure of \$1,013.97 from Native corporation dividends.¹⁵ CSSD did not include income from earnings because Mr. P. is incarcerated and is not able to work outside his correctional facility and earn income at his usual job. After the

6 Exh. 6.
7 Pre-hearing brief at pg. 1.
8 Post-hearing brief at pg. 1.
9 *Id.*
10 Exh. 7.
11 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.
12 AS 25.27.190(e).
13 15 AAC 125.321(d).
14 15 AAC 05.030(h).
15 Exh. 5 at pg. 6.

hearing, CSSD, on a request from the administrative law judge, researched the most recent payout figures from Mr. P.'s Native corporation. The agency concluded he received \$12 per share for his 200 shares, a total of \$2,400.¹⁶ CSSD prepared a child support calculation from this income amount, which results in a child support amount of \$66 per month.¹⁷

Ms. N. argued that Mr. P. can get a job and earn the money with which to pay his child support, but that is not possible while he is incarcerated. During this period of time, Mr. P.'s child support should be calculated from his actual income, which is limited to his Native corporation dividends. When Mr. P. is released and is able to return to his usual employment, his child support should be modified to reflect his ability to pay support at that time.

IV. Conclusion

Ms. N. met her burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Mr. P.'s child support is now correctly calculated at \$66 per month for three children, based on his Native corporation dividends. This amount should be adopted effective June 1, 2009.

V. Child Support Order

- Mr. P. is liable for modified ongoing child support of \$66 per month, effective June 1, 2009, and ongoing;
- All other provisions of CSSD's November 25, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 8th day of February, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁶ Post-hearing brief at pg. 1.

¹⁷ Exh. 7.

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 26th day of February, 2010.

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

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