

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

IN THE MATTER OF:)

D. E. W.)

) OAH No. 09-0696-CSS

) CSSD No. 001063504

DECISION AND ORDER

I. Introduction

This case involves the obligor D. E. W.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 11, 2009. The obligee children are A., who emancipated in 2008, and B.

The formal hearing was held on January 20, 2010. Mr. W. appeared by telephone; the custodian, D. L. L., did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on January 29, 2010.

Based on the record and after careful consideration, the recommendation CSSD made in its post-hearing brief to set Mr. W.'s modified child support at \$50 per month, effective May 1, 2009, and ongoing, is adopted.

II. Facts

A. Procedural Background

Mr. W.'s child support obligation was set at \$650 per month for two children in October 2004.² On April 24, 2009, Mr. W. requested a modification review.³ On April 29, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.⁴ Mr. W. provided income information.⁵ On December 11, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. W.'s ongoing child support to \$353 per month, effective May 1, 2009.⁶ Mr. W. filed an appeal on December 18,

¹ Ms. L. apparently lives out of state and has not provided CSSD with a telephone number as part of her contact information.

² Exh. 1. The older child, C., has emancipated.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Exh. 5.

2009, asserting he has been unemployed since May 2008, so he returned to school to increase his job skills.⁷

B. Material Facts

Mr. W. is currently attending UAA to study Computer Technology. He has one year remaining to complete his certificate program. Mr. W. returned to school because his last employment as a medical billing specialist ended when the company he worked for closed. Mr. W. performed a diligent job search with several local employers but was unable to find another job. He decided to return to school and is financing the completion of his education with Pell grants and student loans.

Mr. W. and his partner, E., have two children in the home, both of them younger than B. E. is in an apprenticeship program and just began working full time as an inside wireman. They have been paying their household expenses with credit cards and borrowing money from family and friends. Mr. W. applied for unemployment benefits when he became unemployed but due to a prior indebtedness, he did not actually begin receiving benefits until October 2009.

Mr. W. has a medical condition known as sarcoidosis and had to be hospitalized on two separate occasions in 2009. His medical bills total approximately \$3,000 in addition to his student loans of \$9,000 and his and E.'s credit card debt of approximately \$10,000. Their rent payment is \$1,000 per month, which E. has been paying most often.

Because Ms. L. did not participate in the hearing, there is no evidence in the record regarding her circumstances.

III. Discussion

Mr. W. is challenging the calculation of his child support amount. The person who filed the appeal, in this case, Mr. W., has the burden of proving by a preponderance of the evidence that the agency's calculations are incorrect.⁸

A parent is obligated both by statute and at common law to support his or her children.⁹ 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

⁷ Exh. 11.

⁸ 15 AAC 05.030(h).

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

of “good cause and material change in circumstances.”¹⁰ A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹¹

Civil Rule 90.3(a)(1) provides that an Obligor's child support is to be calculated from his or her "total income from all sources," minus mandatory deductions. CSSD initially calculated Mr. W.'s modified child support at \$353 per month, but after the hearing, CSSD submitted a post-hearing brief recommending that Mr. W.'s child support be modified to \$50 per month because he is an unemployed student and does not have an income. CSSD stated that when he becomes employed that Mr. W.'s child will benefit from his increased income.

CSSD's recommendation is reasonable and will be adopted. Mr. W. has only one year remaining in his college career and will be reentering the work force soon. His child support obligation should be set in an amount that is realistic and reflects his ability to pay support *at this time*. Upon his return to the work force, he should petition for modification of his child support amount.

IV. Conclusion

Mr. W. met his 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). His child support should be modified to \$50 per month, effective May 1, 2009.

V. Child Support Order

- Mr. W. is liable for modified ongoing child support in the amount of \$50 per month, effective May 1, 2009, and ongoing;
- All other provisions of CSSD's December 11, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 18th day of February, 2010.

By: _____
Kay L. Howard
Administrative Law Judge

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 125.321(d). In this case, the notice was issued on February 9, 2009. Exh. 2.

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 March, 2010.

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

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