

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

IN THE MATTER OF:)

T. V. M.)

OAH No. 10-0055-CSS

CSSD No. 001064744

DECISION AND ORDER

I. Introduction

The Obligor, T. V. M., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on November 4, 2009. The Obligee children are A. and B., who are 14 and 9 years old, respectively.

The hearing was held on February 24, 2010. Mr. M. appeared by telephone. The other party, J.I., did not participate. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded; the evidentiary record closed on March 24, 2010.

Based on the evidence and after careful consideration, Mr. M.'s modified child support is set as follows: \$655 for March 2009 only; \$219 per month from September 2009 through December 2009; and \$170 per month from January 2010 through April 2010, and ongoing. No support is owed for April 2009 through August 2009 because A. and B. lived with Mr. M. during that time period.

II. Facts

A. Procedural History

Mr. M.'s child support obligation for A. was set at \$290 per month in 1998.¹ On February 26, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order so as to add a younger child, B., to the original support order for A..² Neither party provided income information.³ On November 4, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. M.'s ongoing child support for A. and B. at \$571 per month for two children, effective March 1, 2009, and added arrears specifically for

¹ Exh. 3.

² Exhs. 4 & 5.

³ Pre-hearing Brief at pg. 1.

B. of \$1,480 for the period from May 2008 through February 2009.⁴ He appealed on January 21, 2010, asserting that: 1) he is disabled; 2) B. has been living with him full-time since April 6, 2009; and 3) A. also stayed with him from April 6, 2009, through September 6, 2009.⁵

B. Material Facts

Mr. M. is a veteran with a 100% service related disability for which he receives monthly disability benefits. In 2008, he received \$2,471 per month, which increased to the amount of \$2,924 per month in November 2009.⁶

Mr. M. has four children. A. and B. are the youngest. Mr. M.'s oldest child is J., for whom Mr. M. has been paying support for many years. J. reached the age of 18 years and therefore emancipated in September 2008. Mr. M. also has a child older than A. and B. named C., who is 15 years of age and lives in the home with him. C. is in the 10th grade.

Mr. M. and Ms. I. have exercised divided custody of A. and B. since September 2009. In early April 2009, at the custodian's initiation, A. and B. went to live with Mr. M.⁷ He enrolled both of them in school a few days later and they both completed the school year and remained in Mr. M.'s home throughout the summer. Mr. M. enrolled both children in school for the 2009 fall term, but A. did not remain – she returned to Ms. I.'s home on or about September 2, 2009.⁸ B. remained in Mr. M.'s custody and was still living there at the time of the hearing.⁹

Ms. I. did not participate in the hearing, so less is known of her circumstances. Mr. M. testified that she began working on the custodial staff at the A. N. M.I Center in about April 2009. At the close of the hearing, CSSD was directed to research information regarding the custodian's income and work history. After the hearing, CSSD's representative filed an affidavit of Ms. I.'s earnings and unemployment benefits, as reported by the Alaska Department of Labor and Workforce Development for 2008 and 2009. The information indicates Ms. I. worked one quarter for No Name store in 2008 and earned \$4,795.75.¹⁰ Subsequently, she became employed

4 Exh. 7.
5 Exh. 8.
6 Exh. 9.
7 Exh. 8 at pg. 3.
8 Exh. 8 at pgs. 5-6.
9 Exh. 8 at pg. 5.
10 Exh. 10 at pg. 1.

by N. M. in the second quarter of 2009 and earned a total of \$15,816.61 for the year.¹¹ It appears that she is still working for that employer.

III. Discussion

Mr. M. is requesting that his modified child support order be adjusted for three reasons. First, both A. and B. lived with him in 2009. Second, B. still lives with him and he has an older child in the home named C., for whom he should be entitled to a deduction from income in his child support calculation for A. and B. Finally, he asserts that his child support should be set at \$50 per month because he is 100% disabled. As the person who filed the appeal in this case, Mr. M. has the burden of proving by a preponderance of the evidence that the child support amount in CSSD's Modified Administrative Child Support and Medical Support Order is incorrect.¹²

CSSD does not contest suspending Mr. M.'s child support for April 2009 through August 2009 to reflect the fact that both A. and B. lived in his home during that period of time. Nor does CSSD object to granting Mr. M. a deduction from income pursuant to Civil Rule 90.3(a)(1)(d) for supporting his prior child C. in the home. Finally, CSSD agrees that the obligor's child support as of September 2009 should be calculated based on the divided custody provisions of Civil Rule 90.3(b)(2). Thus, the only issue remaining in Mr. M.'s appeal is whether he is entitled to a child support calculation of \$50 per month, the minimum amount allowed by statute, as of September 2009.

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of March 2009.¹³

Civil Rule 90.3 is the court rule that directs how child support obligations are to be calculated in Alaska. According to Civil Rule 90.3(a)(1), an obligor's child support amount is to be calculated based on his or her "total income from all sources." Disability benefits received from governmental sources such as the Veterans Administration and Social Security are considered to be income to an obligor parent, regardless of whether the parent has to pay taxes on those benefits.¹⁴ Thus, Mr. M.'s disability benefits must be included in the child support calculations.

¹¹ *Id.*

¹² 15 AAC 05.030(h).

¹³ 15 AAC 125.321(d). In this case, the notice was issued on February 26, 2009. Exh. 5.

¹⁴ Civil Rule 90.3, Commentary III.A.25-26.

If the parents exercise divided custody of their children, Civil Rule 90.3 provides that child support is to be calculated differently than the situation in which one parent has primary custody. The child support award is calculated by first determining what each parent would owe the other in a primary custody situation, then by offsetting those amounts pursuant to the divided custody mathematical formula.¹⁵

CSSD determined that Mr. M.'s child support for both A. and B. for the month of March 2009 would be \$655.¹⁶ He is not liable for support for them from April 2009 through August 2009 because they lived with him at the time. As of September 2009, Mr. M. is entitled to a divided custody calculation. Thus, from September 2009 through December 2009, CSSD calculated Mr. M.'s child support pursuant at \$219 per month.¹⁷ Also, beginning in January 2010, CSSD calculated Mr. M.'s child support at \$170 per month, once again based on divided custody.¹⁸ These calculations are correct and meet the necessary 15% difference that allows modification of a child support order.

IV. Conclusion

Mr. M. 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 modified child support is now correctly calculated at \$655 for March 2009; \$219 per month from September 2009 through December 2009; and \$170 per month from January 2010, forward. These figures should be adopted. He is not liable for support for A. and B. from April 2009 through August 2009 because they were both living with him at the time.

V. Child Support Order

- Mr. M. is liable for modified child support for A. and B. in the amount of \$655 for March 2009; \$219 per month from September 2009 through December 2009; and \$170 per month from January 2010, forward;
- Mr. M. is not liable for supporting A. and B. from April 2009 through August 2009 because they were both living with him during those months;
- Mr. M. is liable for additional arrears for B. in the amount of \$148 per month

¹⁵ Civil Rule 90.3(b)(2).

¹⁶ Exh. 11 at pg. 2.

¹⁷ Exh. 11 at pg. 5.

from May 2008 through February 2009, as reimbursement for public assistance benefits she received during that time frame;

- All other provisions of CSSD's November 4, 2009, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 14th day of April, 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 3rd day of May, 2010.

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

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