

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

IN THE MATTER OF:	)	
	)	OAH No. 10-0096-CSS
J. R. C.	)	CSSD No. 001117898
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The Obligor, J. R. C., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on February 3, 2010. The Obligee child is T., who is eight years of age. The custodian is S. C. R.

The hearing was held on April 12<sup>th</sup> and May 12<sup>th</sup> of 2010. Both Mr. C. and Ms. R. appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on May 12, 2010.

Based on the record and after careful consideration, Mr. C.’s child support is modified to \$325 per month, effective August 1, 2009.

**II. Facts**

*A. Background*

Mr. C.’s child support obligation for T. was set at \$181 per month in February 2003.<sup>1</sup> Ms. R. initiated a modification review on February 10, 2009.<sup>2</sup> On July 10, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On February 3, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. C.’s ongoing child support to \$613 per month, effective August 1, 2009.<sup>4</sup> Mr. C. appealed on February 19, 2010, asserting primarily that his income was not as CSSD determined and that the modification review was untimely.<sup>5</sup>

---

<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.  
<sup>4</sup> Exh. 4.  
<sup>5</sup> Exh. 5.

*B. Material Facts*

Mr. C. and his wife, V., lived in Fairbanks. They have been married for five years and have two children in the home younger than T., with another child due in October 2010.<sup>6</sup>

Mr. C. does painting and drywalling. He formerly did commercial painting through the union, but most of the work is now in the residential markets. His last union job was in 2008; since then, he has essentially been self-employed.

V. C. was a business major in college. On the advice of her father, Ms. C. started a business named A. P., LLC. Ms. C.'s eventual goal is to become a general contractor, but she is limiting herself at this point to the painting and drywall business in order to gain experience. So as to protect herself financially in the event their marriage does not succeed in the long term, Ms. C. maintains 80% ownership of the corporation and Mr. C. is 20% owner.<sup>7</sup>

In 2009, Mr. C.'s 20% share of A. P.'s corporate income was \$7,015.<sup>8</sup> In addition to being part-owner, Mr. C. performs painting and drywall work for the corporation, so in 2009, it paid him wages in the amount of \$5,299.14.<sup>9</sup> The obligor also had Schedule C income as the sole proprietor of "A. D. and P." in 2009 of \$6,713.<sup>10</sup> Adding these figures results in annual income of \$19,027.14. Inserting these figures into a child support calculation yields a support amount of \$325 per month for one child.<sup>11</sup>

**III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>12</sup> 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." 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. If the 15% change has not been met, CSSD may, but is not required, to modify the child support obligation. A modification is effective beginning the month after the parties are

---

<sup>6</sup> The material facts in this case are taken from the parties' testimony, unless indicated otherwise.

<sup>7</sup> See Exh. A at pgs. 12-15.

<sup>8</sup> Exh. A at pg. 13.

<sup>9</sup> Exh. A at pg. 5.

<sup>10</sup> Exh. A at pg. 6.

<sup>11</sup> Attachment A.

<sup>12</sup> AS 25.27.190(e).

served with notice that a modification has been requested, so the modification in this case is effective on August 1, 2009.<sup>13</sup> Mr. C.'s appeal asserts that he should not have to pay the modified amount until after the appeal is completed, but CSSD's regulations clearly establish the date of notice as the date that triggers the effective date of a modification.

The person requesting the hearing, in this case, Mr. C., has the burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect.<sup>14</sup>

Mr. C.'s child support was previously set at \$181 per month for one child in 2003. In connection with the modification review, CSSD set the modified child support amount at \$613 per month, which was calculated from occupational wage statistics reflecting the median painter's income for Alaska is \$44,268.<sup>15</sup>

Even after the hearing, the exact nature of Mr. C.'s employment situation is not clear. Both he and his wife claimed in the hearing that his only income consists of his share of the partnership income and the wages he received, as reported on his W-2. However, in both 2008 and 2009, Mr. C.'s accountant prepared a Schedule C that reported income to him as the sole proprietor of "A. D. and P." and which used a different Employer ID number than the corporate return.<sup>16</sup> Each Schedule C reported specific gross receipts figures, business expenses and a net profit for A. D. and P. Ms. C. insisted that the Schedule C's were prepared by her accountant by mistake, but these documents were included with Mr. C.'s IRS documents for both 2008 and 2009. Thus, the income reported on the 2009 Schedule C -- \$6,713 -- must be included in Mr. C.'s income for the purpose of calculating his modified child support amount.

In 2009, Mr. C.'s total income from all sources was \$19,027.14. This figure, when inserted into a child support calculation, yields a modified support amount of \$325 per month for one child.<sup>17</sup>

#### **IV. Conclusion**

Mr. C. met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated February 3, 2010, was incorrect,

---

<sup>13</sup> 15 AAC 125.321(d). In this case, the notice was issued on July 10, 2009. Exh. 3.

<sup>14</sup> 15 AAC 05.030(h).

<sup>15</sup> Exh. 4 at pg. 6.

<sup>16</sup> See Exh. A at pgs. 6 & 18.

<sup>17</sup> Attachment A.

as required by 15 AAC 05.030(h). Mr. C.'s child support is now correctly calculated at \$325 per month, and that amount should be adopted, effective August 1, 2009.

**V. Child Support Order**

- Mr. C. is liable for modified ongoing child support in the amount of \$325 per month, effective August 1, 2009;
- All other provisions of CSSD's February 3, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 18<sup>th</sup> day of June, 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 6th day of July, 2010.

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

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