

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

IN THE MATTER OF: )

M. J. V. )

) OAH No. 10-0098-CSS

) CSSD No. 001054550

**DECISION AND ORDER**

**I. Introduction**

The obligor, M. J. V., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on February 9, 2010. The obligee child is D., who is 15 years old. The custodian is N. E. H.

The formal hearing was held on April 12<sup>th</sup> and June 9<sup>th</sup> of 2010. Mr. V. appeared in person for both hearings; Ms. H. did not participate in either proceeding.<sup>1</sup> Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The evidentiary record closed on June 9, 2010, but the 120-day deadline for resolving the appeal is June 22, 2010.<sup>2</sup>

Based on the record and after due deliberation, CSSD's Modified Administrative Child Support and Medical Support Order is vacated. Mr. V.' child support remains at \$374 per month for one child, as previously ordered.

**II. Facts**

*A. Procedural History*

Mr. V.' child support order for D. was set at \$374 per month on November 14, 2002.<sup>3</sup> On June 23, 2009, Ms. H. requested a modification review.<sup>4</sup> On June 24, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order and requested income information.<sup>5</sup> Mr. V. did not respond, so on February 9, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified his child support to \$553

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<sup>1</sup> Ms. H. did not appear for the hearing and telephone calls placed to her two contact numbers went unanswered. Mr. V. stated Ms. H. is currently living in Hawaii.

<sup>2</sup> See AS 44.64.060(d).

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 3.

<sup>5</sup> Exh. 4.

per month, effective July 1, 2009, based on occupational statistics for automobile salespersons.<sup>6</sup> Mr. V. filed an appeal on February 22, 2010, asserting that the deduction for FICA should be doubled because he is self-employed and that his 2009 taxes would be completed and available in a few weeks.<sup>7</sup>

*B. Material Facts*

Mr. V. is the owner of “No Name Auto,” a small used-car lot in Wasilla. He typically buys cars that are more than six years old and have over 100,000 miles on them. His business income was \$19,522 in 2007 and \$50,791 in 2008.<sup>8</sup> However, the business had a significant downturn in 2009 because of the federal government’s “Cash for Clunkers” program and the fact that the big auto companies were extending large discounts and rebates to customers buying new cars. As a result of this downturn, Mr. V.’ business suffered a loss of \$3,568 in 2009.<sup>9</sup> He testified that he and his wife are thinking of closing the business because revenues were down so far in 2009. They have just barely been able to keep the business open by selling items of personal property such as jewelry and furniture. Mr. V. does not know if the 2009 downturn will improve and the business is currently up for sale.

Mr. V.’ company provides in-kind goods and services to Mr. V. This includes housing, one or more vehicles, gasoline, auto insurance and cell phones for him and his wife, A.. CSSD estimated the total value of these in-kind payments at \$22,101 and 2009.<sup>10</sup> Mr. V. challenged CSSDs cost estimate, asserting that these items should not be characterized as in-kind benefits because they are necessary to run the business and that CSSD overestimated their value.<sup>11</sup>

Several years ago, Mr. V. was having problems with vandalism at the car lot, so he purchased a small three-bedroom house for \$32,000 and moved it onto the rear portion of the car lot. He and A. live there in order to secure the property on evenings and weekends. Mr. V. asserted the “structure,” as he called it, would rent for approximately \$700 per month, which is less than the \$895 per month figure CSSD used. Mr. V. owns a house on No Name Lake that

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<sup>6</sup> Exh. 6.

<sup>7</sup> Exh. 7.

<sup>8</sup> Exh. 9.

<sup>9</sup> *Id.*

<sup>10</sup> Post-Hearing Brief at pg. 1.

<sup>11</sup> CSSD’s estimate of the in-kind benefits the business provides to Mr. V. will be accepted for purposes of this discussion, but no factual finding as to each benefit’s specific value is made.

they are remodeling at this time, but they spend little time there. The mortgage on that property is \$700 per month.

In September 2009, the obligee, D., lived in the home with Mr. V. and his wife. D.'s brother, C., also spent that month in the obligor's home, but he is not a child of this order and his presence there would not entitle Mr. V. to a visitation credit.

### **III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>12</sup> 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 first of the month after the parties are served with notice that a modification has been requested.<sup>13</sup> If a person has erratic income from year to year, CSSD may calculate child support based on an average income figure taken from several years' income.<sup>14</sup> In most cases, CSSD uses the average income from a three-year period of time.

The person requesting the hearing, in this case, Mr. V., has the burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect.<sup>15</sup>

CSSD initially modified Mr. V.' child support to \$553 per month. After the hearing, CSSD revised its calculation to \$639 per month. CSSD reached this figure by imputing in-kind benefits to the obligor from his used-car business and averaging his reported business income and the in-kind benefits CSSD attributed to him as income for the three year period of time from 2007 through 2009.<sup>16</sup>

CSSD is authorized by Civil Rule 90.3 to average income over a several year period of time in order to ameliorate the effect of an obligor parent having erratic income over several years. However, averaging income in this case will significantly interfere with Mr. V.' ability to provide support for D. Mr. V. had an OK year in 2007, followed by a good year in 2008 and a devastating year in 2009. To average his income over that period of time, after such a difficult

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

<sup>13</sup> 15 AAC 125.321(d). The notice in this case was issued on June 24, 2009, so the modification would be effective on July 1, 2009.

<sup>14</sup> Civil Rule 90.3, Commentary III.E.

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

<sup>16</sup> See Post-Hearing Brief at pg. 2.

year in 2009, would result in a nearly 100% increase in Mr. V.' child support because the averaging pulls into consideration the good year he had in 2008 without him being able to access that past income to help pay his child support.<sup>17</sup>

When Mr. V.' income for just the 2009 calendar year is considered, it results in a support amount of \$390 per year. This figure reflects the obligor's ability to pay child support in the present time. This is a much more accurate representation of Mr. V.' unique financial circumstances than income averaging would be. Since the \$390 per month figure is only \$16 higher than his current support order, the 15% threshold for modification has not been met. As a result, Mr. V.' child support should not be modified, but should remain at \$374 per month.

#### **IV. Conclusion**

Mr. V. met his burden of proving by a preponderance of the evidence that the February 9, 2010, Modified Administrative Child Support and Medical Support Order is incorrect. Based on his 2009 income, Mr. V.' child support is calculated at \$390 per month, which is not a 15% change from his prior order. Thus, Mr. V.' child support should remain at \$374 per month and the modification order should be vacated. Mr. V.' caseworker will address the issue of a visitation credit for September 2009 when D. stayed with Mr. V.

#### **V. Child Support Order**

- CSSD's February 9, 2010, Modified Administrative Child Support and Medical Support Order is vacated;
- Mr. V.' child support shall remain at \$374 per month for one child, as ordered by Deputy Commissioner of Revenue Larry Persily on November 14, 2002;
- All other provisions of the Administrative Child Support and Medical Support Order issued on March 14, 2002, remain in full force and effect.

DATED this 22<sup>nd</sup> day of June, 2010.

By: Signed  
Kay L. Howard  
Administrative Law Judge

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<sup>17</sup> Mr. V. is self-employed and as a result, he is responsible for voluntarily paying his child support without the benefit of automatic garnishment of a paycheck. He testified that regardless of the 2009 downturn, he has remained current in his child support payments.

**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 12<sup>th</sup> day of July, 2010.

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

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