

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

IN THE MATTER OF:)

M. L. F.)

) OAH No. 10-0122-CSS

) CSSD No. 001109123

DECISION AND ORDER

I. Introduction

The Obligor, M. L. F., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on February 23, 2010 ordering Mr. F. to pay monthly child support in the amount of \$50 per month effective December 1, 2009. The Obligee child is M., age 9.

The formal hearing was held on April 6, 2010. Mr. F. appeared by telephone. The Custodian, M. D., was called prior to the start of hearing and she stated she did not wish to participate so the hearing commenced without her. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record remained open until April 13, 2010 to provide CSSD with an opportunity to review its on-line case diary to determine whether it contained a record of Mr. F. initiating modification review prior to September 2009. On April 12, 2010, CSSD submitted its Post-Hearing Brief providing a summary of Mr. F.'s on-line case diary.¹ The evidence received into the record establishes that the effective date of the modification should be October 1, 2009, not December 1, 2009.

II. Facts

Mr. F.'s child support obligation for M. was previously set at \$277 per month in August 2008, effective May 1, 2008.² In September 2008, Mr. F. was incarcerated. In December 2008, CSSD mailed a blank modification request form to Mr. F. CSSD's on-line case diary contains a notation that Mr. F.'s wife called inquiring about the status of the modification several times in January 2009. In February 2009, his wife left a voice mail stating that Mr. F. would be faxing

¹ CSSD was asked to review its records to determine if Mr. F.'s assertion that he requested a modification review prior to September 2009 could be corroborated. CSSD's Post Hearing Brief is not evidence sufficient to support an independent finding of fact.

² Exhibit 1.

the forms to CSSD.³ None were received. On April 10, 2009, Mr. F.'s wife called and asked CSSD to again send the request for modification form to Mr. F. A blank form was sent. Mr. F. returned the request for modification form signed and dated August 26, 2009.⁴ The form filled out and submitted by Mr. F. was the same form CSSD sent him on April 10, 2009.⁵

On September 8, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁶ Mr. F. did not respond. On February 23, 2010 CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. F.'s modified child support at \$50 per month for one child, effective December 1, 2009. On March 4, CSSD received Mr. F.'s appeal.

At the hearing Mr. F. testified that he was arrested on September 21, 2008. Mr. F. understood "that CSSD is notified as soon as a prisoner is returned to custody so you were aware of this."⁷ Mr. F. testified he appealed because he had repeatedly notified CSSD of his incarceration but his support obligation did not change to reflect his reduction in income. He believes he has been overcharged and wanted his account adjusted accordingly. Mr. F. provided a copy of his Account Transaction History with the Department of Corrections showing minimal income.⁸

At the hearing, CSSD explained that Mr. F.'s child support was modified to the minimum allowable child support, \$50 per month, because Mr. F. was incarcerated. CSSD asked that the effective date of the order be changed to comport with 15 AAC 125.321(d), which provides that the effective date of a modification is the first day of the month following the date on which the notice of petition was served on the nonrequesting party. In this case CSSD issued the notice on September 8, 2009.

III. Discussion

Mr. F. has been incarcerated since September 2008 and has no income. However this does not mean that he does not have an obligation to support his child. Parents are obligated both

³ Post Hearing Brief.

⁴ Exhibit 2.

⁵ Exhibit 2. The form has at the top right corner the date "April 10, 2009." Because this is the same date CSSD represented it sent a request for modification form to Mr. F., it is concluded that this is the form referenced by CSSD in its on-line case diary for the entry of that date.

⁶ Exhibit 3.

⁷ Exhibit 5 at 8.

⁸ Exhibit 5 at 3 – 8.

by statute and at common law to support their children.⁹ They are not relieved of this obligation simply because they have no income. Civil Rule 90.3(b)(3) requires that the minimum child support amount that may be ordered by law is \$50 per month. That is the amount of child support CSSD set in the February 2010 Modified Administrative Child Support and Medical Support Order. Mr. F. does not dispute the amount of child support ordered, but he disputes the effective date of the order.

Mr. F. is correct that CSSD was aware of his incarceration as early as September 25, 2008. However, an incarcerated parent may have sources of income or earnings during the period of incarceration. Therefore, before a child support order will be modified, the party seeking a modification must file the appropriate document. CSSD provided Mr. F. with the proper form in April 2009. Mr. F. did not sign and date the form until August 2009. CSSD received the form in September 2009 and promptly issued a Notice of Petition for Modification of Administrative Support Order on September 8, 2009. By regulation the effective date of the order should have been October 1, 2009, not December 1, 2009.

CSSD correctly calculated Mr. F.'s modified child support obligation for one child at \$50 per month, based on his incarceration. CSSD incorrectly identified the effective date of the downward modification as December 2009.

As discussed with Mr. F. at the hearing, he may be able to obtain a default review of the May 1, 2008 order setting his child support obligation at \$277 per month. Whether a default review is warranted is not part of this appeal. CSSD has sent Mr. F. the documents necessary to initiate a default review, however, Mr. F. must start the review process by sending the completed form along with any information requested to CSSD.

IV. Conclusion

Mr. F. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. His modified child support has now been correctly set at \$50 per month, effective October 1, 2009.¹⁰

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

¹⁰ A modification is effective beginning the month after the parties are served with notice that a modification has been requested. 15 AAC 125.321(d). In this case, CSSD issued notice of the modification review on September 8, 2009. See Exh. 3.

V. Child Support Order

- Mr. F. is liable for modified ongoing child support in the amount of \$50 per month, effective October 1, 2009, and ongoing;
- All other provisions of the February 23, 2010 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 26th day of April, 2010.

By: Signed
Rebecca L. Pauli
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 14th day of May, 2010.

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

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