

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

IN THE MATTER OF: )

H. F. D. )

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) OAH No. 10-0138-CSS  
) CSSD No. 001133919  
)

**DECISION AND ORDER**

**I. Introduction**

The Obligor, H. F. D., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on January 13, 2010. The Obligee children are K., 8; L., 7; and M., 6. The custodial parent is M. D. T.

The hearing was held on April 15<sup>th</sup> and April 21<sup>st</sup> of 2010. Mr. D. appeared by telephone for the second session of the hearing; Ms. T. appeared by telephone for both sessions. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on May 21, 2010, following CSSD’s submission of its Post-Hearing Brief.

Based on the evidence and after careful consideration, Mr. D.’s child support is modified to \$1,154 per month for three children, effective July 1, 2009, and further modified to \$1,030 per month for three children, effective January 1, 2010.

**II. Facts**

*A. Procedural History*

Mr. D.’s child support obligation for K., L. and M. was set at \$452 per month in 2005.<sup>1</sup> On June 9, 2009, Ms. T. requested a modification review.<sup>2</sup> On June 10, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties to inform them a modification had been requested.<sup>3</sup> On January 13, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. D.’s ongoing child support to \$1,604 per month, effective July 1, 2009.<sup>4</sup> He appealed on February 26, 2010,

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

asserting that he supports an older child in the home and his income is lower than it was in the past.<sup>5</sup>

*B. Material Facts*

Mr. D. lives in Interior Alaska and is employed on the North Slope, where he works for No Name at Prudhoe Bay on a 3 week-on, 3 week-off schedule. He has worked for No Name since early 2008.<sup>6</sup> In 2009, he earned \$71,928.38, and in addition to taxes and Social Security, he paid approximately \$245.10 per month in a combined deduction for retirement and union dues.<sup>7</sup>

For 2010, Mr. D. is estimated to earn a somewhat lower income due to a reduction in hours from 2009. Based on his most current paystub that shows gross earnings through April 11, 2010, of \$17,460.90,<sup>8</sup> CSSD estimated his total income in 2010 at \$63,101.20.<sup>9</sup> In addition to taxes and Social Security, he is entitled to a deduction for combined retirement and union dues in the amount of \$221.71 per month.<sup>10</sup>

Mr. D. has an older child named S. who lives in the home with him and his wife, Q. S. is currently 12 years of age and has been living with Mr. D. since birth.<sup>11</sup> Based on his 2009 income, Mr. D. is entitled to a deduction from income for supporting S. in the amount of \$874 per month.<sup>12</sup> Based on the estimate of his 2010 income, Mr. D.'s deduction from income for supporting S. in the home equals \$780 per month.<sup>13</sup>

**III. Discussion**

Mr. D. has raised two issues in this appeal. First, he is requesting credit for S., his older daughter who lives in his home. Second, he claims that he is entitled to an additional deduction from income for union dues and the retirement he pays through his union. As the person who filed the appeal in this case, Mr. D. has the burden of proving by a preponderance of the

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<sup>5</sup> Exh. 6.  
<sup>6</sup> Exh. 7.  
<sup>7</sup> Exhs. 7 & 11.  
<sup>8</sup> Exh. 13 at pg. 8.  
<sup>9</sup> Exh. 15 at pg. 3.  
<sup>10</sup> *Id.*  
<sup>11</sup> Exh. 10 at pg. 1.  
<sup>12</sup> Exh. 14 at pg. 2.  
<sup>13</sup> Exh. 15 at pg. 2.

evidence that the child support amount in CSSD's Modified Administrative Child Support and Medical Support Order is incorrect.<sup>14</sup>

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>15</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. 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 served with notice that a modification has been requested, so this modification is effective as of July 2009.<sup>16</sup>

A parent who supports an older child in the home is entitled to an additional deduction from his or her income.<sup>17</sup> The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.<sup>18</sup>

Mr. D.'s child support was set at \$452 per month for three children in 2005. In response to the current modification request, CSSD modified Mr. D.'s child support to \$1,604 per month, based on his actual income for 2009.<sup>19</sup> Apparently, CSSD was not aware that he had a prior child in the home or that he pays union dues and retirement, so this calculation did not give Mr. D. those deductions.<sup>20</sup>

The hearing testimony and additional documentation lead to the conclusion that CSSD's calculation should be revised to reflect the fact that he supports a prior child in the home and has other mandatory expenses that are deducted from his pay. After the hearing, CSSD submitted updated calculations that indicate Mr. D.'s 2009 child support should be modified to \$1,154 per month for three children, which reflects the prior child deduction and Mr. D.'s deductions for union dues and retirement. This calculation is correct and it is more than 15% different than his prior order such that his child support should be modified. Similarly, Mr. D.'s 2010 child support should be further modified to \$1,030 per month for three children, as of January 1, 2010.

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

<sup>15</sup> AS 25.27.190(e).

<sup>16</sup> 15 AAC 125.321(d). In this case, the notice was issued on June 10, 2009. Exh. 4.

<sup>17</sup> Civil Rule 90.3(a)(1)(C).

<sup>18</sup> *Id.*

<sup>19</sup> Exh. 5 at pg. 6.

<sup>20</sup> *Id.*

This second calculation is not more than 15% less than the newly-calculated 2009 figure, but it should be used because it more accurately reflects his reduced earnings in 2010, which are expected to continue into the future.

#### **IV. Conclusion**

Mr. D. 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 child support is now correctly calculated and the modification amounts for 2009 and 2010 should be adopted.

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

- Mr. D.'s child support obligation for K., L. and M. is modified to \$1,154 per month, effective July 1, 2009;
- Mr. D.'s child support obligation is further modified to \$1,030 per month for three children, effective January 1, 2010, and ongoing;
- All other provisions of CSSD's January 13, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 15<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 2<sup>nd</sup> day of July, 2010.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Deputy Chief Administrative Law Judge  
Title

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