

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

IN THE MATTER OF)
)
 E. D.) OAH Case No. 10-0156-CSS
) CSSD Case No. 001140872
_____)

DECISION & ORDER

I. Introduction

The obligor, E. D., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on March 16, 2010. A hearing on Mr. D.'s appeal was held on April 26, 2010. The custodian of record, J. H., appeared by telephone. Erinn Brian represented CSSD by telephone. The child is K. H. Mr. D. did not appear at the hearing or show cause for his failure to appear; this decision is therefore based on the record in accordance with 15 AAC 05.030(j).¹

The modified order is affirmed.

II. Facts

This case arises from a request for modification from the custodian. Mr. D.'s support obligation was set at \$534 per month for one child on June 19, 2006.² CSSD's modified order set the support amount at \$772 per month for one child.³

CSSD based its calculation in the modified order on gross annual income of \$59,741.74, the amount of wages reported to the Department of Labor for Mr. D. in 2009 plus a PFD.⁴ After Mr. D. appealed, CSSD recalculated Mr. D.'s income by adding up income shown on his 2010 paystubs as of March 19, 2010, and then extrapolating annual income for the rest of the year. This calculation resulted in annual wages of \$57,343.⁵ With a projected PFD of \$1,305, Mr. D.'s gross income would be \$58,648, and his adjusted annual income would be \$45,585.76. This results in a monthly support obligation of \$760 for one child, a reduction of just twelve dollars below the amount CSSD calculated for 2009 based on actual income for that year.

¹ Mr. D. contacted the Office of Administrative Hearings on April 22, 2010 and advised that he did not intend to appear at the hearing and would be satisfied to have the decision based on the written record.

² Exhibit 1, page 1.

³ The modified order showed a medical credit of \$22.59, which would lower the support amount to \$749. CSSD stated at the hearing that there was an error in calculating the medical credit, and the agency was working to calculate the correct amount, which would vary slightly. CSSD stated that the basic support amount of \$772 was correct.

⁴ Exhibit 7, page 6; Exhibit 10, page 1.

⁵ Exhibit 11, page 1.

III. Discussion

For a primary custody situation, support for one child is properly calculated as twenty percent of the obligor's adjusted gross income.⁶ Once the support amount is determined for a year, the amount may be modified on a showing of a material change of circumstances.⁷ A "material change of circumstances" is presumed to exist if the support amount would increase or decrease by more than fifteen percent.⁸ Support is calculated based on the best available information regarding the obligor's income.⁹ At a formal hearing, the person requesting the hearing has the burden of demonstrating that CSSD's decision is in error.¹⁰

CSSD has calculated Mr. D.'s support obligation for 2009 based on actual income information. Based on extrapolated year to date income information, Mr. D.'s income will not decrease significantly in 2010.

In his appeal, Mr. D. wrote in part that

- since I was hired by my new employer, I am paid \$22.10 per hour. Unlike before, I was on "salary" but now I am on hourly basis.
- Rest assured that I will be making less now because transition is over & no more overtime. Training for new policies is over.

It is possible, as Mr. D. predicts, that his income will decrease in 2010 to an amount that would be substantially less than he earned in 2009, and would warrant a reduced support obligation. However, with Mr. D.'s employment and pay in a recent state of flux, predicting such a decrease is too speculative at this point to warrant a reduction in support. If it turns that by the end of 2010 Mr. D.'s support amount has decreased significantly, he may request a modification at that time asking that 2011 support be based on 2010 income.

IV. Conclusion

CSSD has correctly calculated Mr. D.'s support obligation to be \$772 per month for 2009. The ongoing support amount should also be set at that amount until there is reliable evidence of a material change in circumstances.

V. Order

IT IS HEREBY ORDERED that Mr. D.'s support obligation be set at \$772 per month for one child, effective August 1, 2009. CSSD shall apply appropriate credits for medical insurance.

⁶ Civil Rule 90.3(a).

⁷ Civil Rule 90.3(h).

⁸ Civil Rule 90.3(h)(1).

⁹ 15 AAC 125.050.

¹⁰ 15 AAC 05.030(j).

All other terms of the Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division on March 16, 2010, shall remain in effect.

DATED this 7th day of May, 2010.

By: Signed
DALE WHITNEY
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 notices, 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 R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 26th day of May, 2010.

By: Signed
Signature
Terry L. Thurbon
Name
Chief Administrative Law Judge
Title

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