

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

IN THE MATTER OF:)

E. L. T.)

) OAH No. 10-0180-CSS
) CSSD No. 001066661
)

DECISION AND ORDER

I. Introduction

The Obligor, E. L. T., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on March 22, 2010. The Obligee child is Q., who is currently twelve years of age.

The hearing was held on May 4, 2010. Both Mr. T. and the custodian, T. M. B., participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on May 4, 2010.

Based on the record and after due deliberation, Mr. T.’s child support is modified to \$453 per month, effective December 1, 2009.

II. Facts

A. Background

Mr. T.’s child support obligation for Q. was set at \$242 per month in December 2007.¹ Mr. T. requested a modification review on November 13, 2009.² On November 16, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. T. provided financial information.⁴ On March 22, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. T.’s ongoing child support to \$472 per month, effective December 1, 2009.⁵ Mr. T. appealed on March 22, 2010, asserting primarily that he should not have to pay so much for one child when he pays support for a total

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.

of three children. Also, Mr. T. asserted that he has spent the last two years trying to get caught up on the arrears that accrued while he was recovering from back surgery.⁶

B. Material Facts

Mr. T. is currently unemployed. His most recent employment was with No Name Management Company, where he was a high-rise window washer and maintenance man. He was laid off in January, and is receiving unemployment benefits. Mr. T. testified that he expects to be called back to work in the near future, although he is currently looking for other employment in the event No Name Management does not call him back.

Mr. T.'s 2009 wages, as reported to the Alaska Department of Labor and Workforce Development, totaled \$33,012.79.⁷ Mr. T. was not entitled to the 2009 PFD,⁸ so his total wages is the only income figure that should be included for purposes of child support. Minus the 2009 PFD amount, Mr. T.'s income yields a child support calculation of \$453 per month.⁹

Mr. T. has had a history of medical problems. He had back surgery not related to his employment in March 2008. In August 2009 he hurt his arm but continued to work until January 2010. Mr. T. stated he has advanced arthritis in his shoulder. He has been to the emergency room on two separate occasions but he refuses to take the pain medication offered to him because he is a recovering addict. The ER doctor recommended that he see a surgeon about his arm but his back surgeon apparently will not treat him for another condition because he has an unpaid bill with that doctor.

Mr. T. stated he is essentially homeless and lives in his truck or at his aunt's residence. This is because Mr. T. has two other child support cases and pays over \$300 per month for those children, both of whom are younger than Q. Thus, with all of the arrears he has had on all of his cases, Mr. T. has sacrificed personally while trying to catch up with the back child support that accumulated while he was previously recovering from back surgery.

Mr. T. stated CSSD told him he should apply for a hardship reduction in his ongoing garnishment. But he refused to request the hardship reduction because he was working and trying to catch up on the arrears at the time. Similarly, Mr. T. has in the past applied for Social

⁶ Exh. 6.

⁷ Exh. 7 at pg. 1.

⁸ Hearing presentation by CSSD.

⁹ Exh. 8.

Security disability but by the time his disability hearing was to be held he was working and informed Social Security of his employment. Apparently, he has abandoned his request for Social Security disability but now finds himself unemployed and looking for work.

Ms. B. participated in the hearing but did not have any testimony to put on the record.

III. Discussion

A. Mr. T.'s income

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ 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.¹²

Mr. T.'s child support was set at \$242 per month for one child in 2007. In this modification review, CSSD calculated his new child support at \$472 per month.¹³ Before the hearing CSSD revised the child support figure to \$453 per month based on Mr. T.'s actual 2009 income minus the 2009 PFD amount. This revised calculation appears to be correct and it meets the necessary 15% difference that supports modification of a child support order.

Mr. T. was in a layoff status at the time of the hearing, but he testified he was waiting for a call back from his employer. Thus, it is more likely than not that Mr. T.'s unemployment is a temporary circumstance that will improve when he returns to work or finds another job. The obligor may lack the ability to pay the total child support amount every month while he is unemployed, but there is no evidence that Mr. T. is permanently unemployed. He may incur some additional arrears while he is unemployed, but Mr. T. should be able to start paying those off once he starts working again. Alaska law generally considers unemployment to be a

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ AS 25.27.190(e).

¹² 15 AAC 125.321(d). In this case, the notice was issued on November 16, 2009. Exh. 3.

¹³ Exh. 5 at pg. 6.

temporary circumstance that should not result in the reduction of an obligor parent's child support obligation.¹⁴ Similarly, paying support for subsequent (younger) children does not entitle a noncustodial parent to a reduction in the child support calculated in the case of an older child.¹⁵ Were Mr. T.'s other children older than Q., the support he pays on their behalf would entitle him to a deduction for supporting them in his child support calculation here.¹⁶ But because they are both younger, he cannot have his child support for Q. reduced to reflect the payments for the other children.

IV. Conclusion

Mr. T. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. He was not entitled to a 2009 PFD so that income amount should not be included in his income for the purpose of calculating his child support. Mr. T.'s modified child support is now correctly calculated at \$453 per month, and that figure should be adopted.

V. Child Support Order

- Mr. T. is liable for modified ongoing child support in the amount of \$453 per month, effective December 1, 2009;
- All other provisions of CSSD's March 22, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 18th day of May, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁴ *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

¹⁵ *See* Civil Rule 90.3, Commentary VI.B.2.

¹⁶ Civil Rule 90.3(a)(1).

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 7th day of June, 2010.

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

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