

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

IN THE MATTER OF: )  
 ) OAH No. 10-0201-CSS  
A. L. K. ) CSSD No. 001145505  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

This case involves the obligor A. L. K.'s appeal of a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in her case on February 23, 2010. The obligee child is W., who is five years old. The custodian of record is W. R. P.

The formal hearing was held on May 12, 2010. Ms. K. appeared by telephone; the custodian did not participate.<sup>1</sup> Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on May 12, 2010.

Based on the record and after careful consideration, Ms. K.'s child support is modified to \$50 per month, effective October 1, 2009, based on her actual income.

**II. Facts**

*A. Procedural Background*

Ms. K.'s child support obligation was set at \$234 per month for one child in March 2007.<sup>2</sup> On August 21, 2009, she requested a modification review.<sup>3</sup> On September 9, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.<sup>4</sup> Ms. K. did not provide income information. On February 23, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that Ms. K. did not provide income information.<sup>5</sup> Ms. K. filed an appeal on March 30, 2010, asserting she is currently attending school full-time to become a chef and she gave birth to a daughter in September 2009.<sup>6</sup>

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<sup>1</sup> Telephone calls were placed to Mr. P.' two contact numbers before the hearing. One of the numbers is no longer in service and the other went unanswered.

<sup>2</sup> Exh. 1.

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

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

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

<sup>6</sup> Exh. 11.

**B. Material Facts**

Ms. K. recently turned 24 years of age. She stated she left home at an early age and does not have any appreciable work skills or experience, although she does have two years of sobriety under her belt.<sup>7</sup> Ms. K. is currently studying to become a chef at S. S. Community College,<sup>8</sup> which she asserts has one of the best culinary programs in Washington. With the help of food stamps and daycare assistance she and her husband S. just manage to get by on his annual courier salary of \$11,224.<sup>9</sup> They had a child in September 2009.<sup>10</sup>

Because Mr. P. did not participate in the hearing, there is no evidence in the record regarding his circumstances.

**III. Discussion**

Ms. K. is challenging the denial of her petition for modification. The person who files the appeal has the burden of proving by a preponderance of the evidence that the agency's order is incorrect.<sup>11</sup>

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>13</sup> 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." A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>14</sup>

CSSD initially denied Ms. K.'s petition for modification because she did not adequately document her income. The obligor claimed she told CSSD she was not working, but a mere assertion that one is unemployed, without more, does not adequately document one's income for child support purposes. During and after the hearing, however, Ms. K. established that she is a full-time student in a career program that promises to provide income in the future that will benefit her son W. much more than attempting to find minimum wage employment at this time. Ms. K. does not have any work experience to speak of, so her choice to go to school and obtain job skills that will provide her with a career in the future was a reasonable decision. Since W. is only five years old, Ms. K. will be able to provide him with

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<sup>7</sup> Unless otherwise noted, the findings of fact are taken from Ms. K.'s hearing testimony.

<sup>8</sup> Letter dated May 5, 2010 from S. S. Community College, received on May 10, 2010, along with several other documents from Ms. K.

<sup>9</sup> Obligor's 2009 tax return received on May 10, 2010.

<sup>10</sup> Birth certificate received on May 10, 2010.

<sup>11</sup> 15 AAC 05.030(h).

<sup>12</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>13</sup> AS 25.27.190(e).

<sup>14</sup> 15 AAC 125.321(d). In this case, the notice was issued on September 9, 2009. Exh. 3.

much higher child support amounts after she finishes school. Ms. K. is expected to inform CSSD as soon as she is working so that her child support can be modified.

Ms. K.'s child support should thus be modified to \$50 per month because she is an unemployed student and does not have an income. Her child support obligation should be set in an amount that is realistic and reflects her ability to pay support *at this time*. Upon her return to the work force, she should petition for modification of her child support amount.

#### **IV. Conclusion**

Ms. K. met her burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was incorrect, as required by 15 AAC 05.030(h). Her child support should be modified to \$50 per month, effective October 1, 2009.

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

- Ms. K. is liable for modified ongoing child support in the amount of \$50 per month, effective October 1, 2009, and ongoing;
- All other provisions of CSSD's March 12, 2007, Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 1<sup>st</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 18<sup>th</sup> 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.]