

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

IN THE MATTER OF:)	
)	OAH No. 10-0209-CSS
D. J. W.)	CSSD No. 001107379
_____)	

DECISION AND ORDER

I. Introduction

The Obligor, D. J. W., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 25, 2010. The obligee child is K., who is 11 years old. The custodial parent is M. R. F.

The hearing was held on May 11, 2010. Child Support Specialist Andrew Rawls appeared in person to represent CSSD. Ms. F. appeared by telephone. An attempt was made to contact Mr. W. at the beginning of the hearing. He could not be reached, so a voice mail message was left for him. During the hearing, he contacted the Office of Administrative Hearings and his participation by telephone began approximately fifteen minutes into the hearing.

Based on the record as a whole and after careful consideration, Mr. W.'s child support is modified to \$884 per month, effective February 1, 2010.

II. Facts

A. History

A Child Support Decision and Order was issued by the Office of Administrative Hearings on April 15, 2005, setting ongoing support at \$234 per month.¹ Ms. F. requested a modification of that amount on January 14, 2010.² The Notice of Petition for Modification of Administrative Support Order was mailed to the parties on January 15, 2010.³ On March 25, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order.⁴ This order set

¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhibit 4.

ongoing child support at \$808 per month based on the obligor's actual wages as reported to the Alaska Department of Labor and Workforce Development.⁵

Mr. W. appealed, asserting: 1) he pays child support to N. C. W.; 2) he made a direct payment to N. W. of \$10,400; and 3) he spends \$675 per month flying between work and his home in Idaho.⁶

B. Material Facts

Mr. W. testified that he had been working for No Name Drilling but that he was laid off on April 22, 2010. He is eligible for rehire when work is available. During 2009, Mr. W. earned \$69,891.17.⁷ Mr. W. also testified that he was not currently living in Idaho. He stated that he had been in Idaho for three or four months, but is living with his aunt in Kenai now. He does not know whether he will remain in Alaska indefinitely or return to Idaho.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁸ 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."⁹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established and the order may be modified. If the 15% minimum change has not been met, CSSD may modify the child support obligation, but it is not required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁰

The first issue on appeal concerns Mr. W.'s payments to N. W. Mr. W. testified that the children for whom these payments are made are younger than K., the child in this case. An obligor parent is entitled to a deduction from current income for child support payments actually

⁵ Exhibit 4, page 4.

⁶ Exhibit 5.

⁷ Exhibit 4, page 2; Exhibit 6, page 1.

⁸ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁹ AS 25.27.190(e).

¹⁰ 15 AAC 125.321(d). In this case, the notice was issued on January 15, 2010, so the modification is effective February 1, 2010. *See* Exhibit 3.

made if those payments are for children from a prior relationship.¹¹ No credit is permitted for support payments made in connection with children from a subsequent relationship.¹² Thus, regardless of whether the \$10,400 payment to N. W. was a voluntary or court-ordered child support payment, there is no basis for granting Mr. W. a deduction from income for paying that amount.

In his second issue, Mr. W. requested another deduction from income to reflect the travel expenses of \$675 per month that he incurs for traveling back and forth from Alaska to Coeur d'Alene, Idaho. Mr. W.'s appeal form states that he lives in Coeur d'Alene,¹³ but after Ms. F. testified that he really lives in Kenai and, in fact, that he visited her at her home in Kenai the previous day, Mr. W. acknowledged that he hadn't yet decided about moving to Idaho but that he had lived in Coeur d'Alene for three months previously.

CSSD argued that there is no basis in Civil Rule 90.3 for a deduction for travel expenses. CSSD is correct. Commuting costs are not an allowable deduction from income for purposes of calculating child support under Civil Rule 90.3(a). A child should not be required to pay in the form of reduced child support payments for a parent's decision to live at a great distance from his or her employment. Child support is paid out of current income.¹⁴ That Mr. W. may have had higher commuting expenses for a short time in the past is not relevant to his present income. But in any event, Mr. W. testified that he does not live in Idaho, so this is a moot point.

Mr. W. also testified that he was currently unemployed. There is no evidence to suggest this unemployment will be permanent, and temporary periods of unemployment are disregarded for purposes of child support.¹⁵

In calculating Mr. W.'s support obligation, CSSD did not include an expectation that he would receive a Permanent Fund Dividend check.¹⁶ Given Mr. W.'s statements on his appeal form and during his testimony, it was appropriate not to include a PFD check in Mr. W.'s expected earnings. Since he is unsure whether he will remain in Alaska, he likely will not qualify for either a 2010 or 2011 PFD.

11 Civil Rule 90.3(a)(1)(C).

12 Civil Rule 90.3, Commentary III.D.

13 Exhibit 5.

14 Civil Rule 90.3, Commentary III.E.

15 *See In The Matter Of M.J.V.*, OAH Case No. 09-0181-CSS.

16 Exhibit 4, page 6.

Finally, CSSD's child support calculation also included "Other Deductions" of \$384 per month.¹⁷ Nothing in the record supports this monthly deduction and so it should not be included in the child support calculation. Removing that unknown deduction from the calculation, Mr. W.'s 2009 income yields a modified child support amount of \$884 per month for one child.¹⁸

IV. Conclusion

Mr. W. has an adjusted annual income of over \$50,000 per year. He has adequate resources to provide for K. even though he is also paying child support for his subsequent children. CSSD correctly determined that his child support obligation should be modified, but the correct amount is \$884 per month. This figure should be adopted.

V. Child Support Order

- Mr. W. is liable for modified ongoing child support in the amount of \$884 per month for one child, effective February 1, 2010, and ongoing;
- All other provisions of CSSD's March 25, 2010 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 28th day of May, 2010.

By: *Signed* _____
Kay L. Howard
Administrative Law Judge

¹⁷ Exhibit 5, page 2.

¹⁸ Attachment A. CSSD's online child support calculator is located at www.childsupport.alaska.gov.

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 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.]