

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

IN THE MATTER OF:)	
)	OAH No. 10-0221-CSS
J. F. F.)	CSSD No. 001126791
_____)	

DECISION AND ORDER

I. Introduction

The obligor, J. F., requested a modification of an ongoing administrative child support order. The oblige child in this matter is J. M. N., DOB 00/00/2003. The custodial parent is J. D. N. The current child support obligation is \$103 per month set in September of 2007.

The Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order on March 4, 2010, setting the support obligation at \$50 per month. Ms. N. appealed that decision.

A hearing was held on May 17, 2010. Mr. Andrew Rawls represented CSSD. Mr. F. appeared by phone. Initially, Ms. N. was also available by phone. While setting up the conference call with Mr. F., however, the phone connection with Ms. N. ended. Attempts to call her back were unsuccessful. A message was left on her voice mail asking her to contact the Office of Administrative Hearings and informing her that a decision would be made based on the written record if she did not make contact. Ms. N. has not contacted the Office of Administrative Hearings to reschedule the hearing. Pursuant to 15 AAC 05.030(j), this decision and order is entered based on the written record.

II. Facts

A. Background

Mr. F.'s support obligation was set at \$103.00 per month in 2007.¹ CSSD received his Request for Modification of a Child Support Order on November 12, 2009.² The Notice of Petition for Modification of Administrative Support Order was mailed on December 16, 2009.³

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

CSSD modified Mr. F.'s support obligation to \$50.00 per month as of January 2010.⁴ Ms. N. appealed that decision, asserting that Mr. F. has income from selling and repairing cars.⁵

B. Material Facts

During its investigation, CSSD determined that Mr. F. was incarcerated and therefore had no income.⁶ His mailing address is at the Anchorage Correctional Complex.⁷

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 "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.¹⁰

As the person requesting the hearing, it was Ms. N.'s burden to show that CSSD's determination was incorrect.¹¹ Ms. N. asserted that Mr. F. earned income selling and repairing cars, but she provided no explanation describing how she knew this information and no additional evidence in support of her assertion. Nor did she provide any evidence to dispute CSSD's finding that Mr. F. was incarcerated. While Mr. F. may have earned income through selling and repairing cars in the past, his present incarceration would prevent him from doing so now.

Although Mr. F. has no income, he still has support obligations. The minimum child support amount that may be ordered is \$50.00 per month.¹² This amount represents a decrease from the prior support obligation of more than 15% so there is a material change of

4 Exhibit 4.

5 Exhibit 5.

6 Exhibit 4, pages 3 & 6.

7 Exhibit 3, page 3.

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

9 Alaska Statute AS 25.27.190(e).

10 Alaska Regulation 15 AAC 125.321(d).

11 15 AAC 05.030(h).

12 Civil Rule 90.3(c)(3).

circumstances justifying a modification.¹³ Modification to this amount becomes effective the month after the notice of the petition for modification was mailed to Ms. N.¹⁴

IV. Conclusion

Because Mr. F. has no income now, his circumstances have changed and he is entitled to a modification of his support order. This amount should be set at the minimum child support obligation of \$50.00 per month. Accordingly, CSSD's modification should be affirmed.

V. Child Support Order

CSSD's March 4, 2010 Modified Administrative Child Support and Medical Support Order is affirmed.

DATED this 8th day of June, 2010.

By: Signed
Jeffrey A. Friedman
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 25th day of June, 2010.

By: Signed
Signature
Jeffrey A. Friedman
Name
Administrative Law Judge
Title

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

¹³ Civil Rule 90.3(h)(1).

¹⁴ Civil Rule 90.3(h)(2).