

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

IN THE MATTER OF: )  
 )  
A. H. ) OAH No. 10-0224-CSS  
 ) CSSD No. 001117906  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The custodial parent, C. O., requested a modification of the ongoing administrative child support order in this matter. The obligee child is C. O., who is seven years old. The obligor is A. H. The current child support obligation is \$187 per month.

The Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order on March 23, 2010, and Mr. H. appealed that decision.

A hearing was held on May 19, 2010. Child Support Specialist Erinn Brian represented CSSD. Mr. H. appeared in person. Ms. O. was contacted by telephone and she decided not to participate in the hearing. The record was kept open until May 21, 2010 to allow CSSD to submit an updated calculation based on new income and deduction information presented at the hearing. That updated calculation has been provided, and CSSD has asked that Mr. H.'s support obligation be based on this new calculation.<sup>1</sup>

Based on the evidence presented at the hearing, and the new calculation submitted by CSSD, Mr. H.'s monthly support obligation will be set at \$441 per month.

**II. Facts**

*A. Background*

An Administrative Child Support and Medical Support Order was issued on April 9, 2003, setting Mr. H.'s support obligation at \$187 per month.<sup>2</sup> CSSD received Ms. O.'s modification request on December 23, 2009.<sup>3</sup> A Notice of Petition for Modification of Administrative Support Order was mailed on December 24, 2009.<sup>4</sup> A Modified Administrative

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<sup>1</sup> Submission to Record, dated May 19, 2010.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 3.

Child Support and Medical Support Order setting Mr. H.'s support obligation at \$487 per month was issued on March 23, 2010.<sup>5</sup>

Mr. H. appealed the modified order stating 1) he received more overtime in 2009 than he was likely to receive in the future, 2) he earned significantly less in 2008 and asked that his income be averaged in setting the support obligation, and 3) he was now paying \$65 per month to provide health care coverage for his child. At the hearing, Mr. H. also testified that he was now contributing 10% of his wages towards a 401(k) retirement plan.

*B. Material Facts*

Mr. H. started working as a heavy equipment mechanic on March 11, 2009.<sup>6</sup> He earned a significant amount of overtime pay during his first year of employment, but expects to work less overtime this year and in the future. He did, however, receive a \$1.00 per hour raise in 2010, and currently earns \$18 per hour. He contributes 10% of his wages to an employer sponsored 401(k) plan. He is paying \$65 per month additional health insurance premium to provide coverage for his child.<sup>7</sup> In order to obtain his current higher paying job, Mr. H. had gone back to school. He owes \$7,000 in student loans, and is paying \$56 per month towards that debt. Mr. H. agreed that the yearly income of \$33,884.90 for 2009 as shown in Exhibit 4, page 6, was correct. He confirmed that he was eligible for a 2009 Permanent Fund Dividend, but also stated that this amount was garnished.

At the hearing, Mr. H. provided four pay stubs from his 2010 employment.<sup>8</sup> He is paid twice a month, and the most recent pay stub shows his year to date income through the end of April, 2010. These pay stubs also show that he continues to earn some overtime, and they confirm his health insurance payments and 401(k) contributions. Through the end of April, Mr. H. earned a year to date total of \$11,313, including overtime. This equates to an annualized income of \$33,939.<sup>9</sup>

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<sup>5</sup> Exhibit 4.

<sup>6</sup> The factual findings in this decision are based on Mr. H.'s testimony unless otherwise noted.

<sup>7</sup> He pays \$32.50 per pay period for his own coverage, and another \$32.50 per pay period for his child.

<sup>8</sup> Exhibit 7, pages 2 & 3.

<sup>9</sup>  $\$11,313 \div 8$  pay periods = a bi-monthly income of \$1414.125.  $\$1414.125 \times 24$  pay periods in a year = \$33,939. CSSD's calculation rounded the bi-monthly income up to \$1414.13. This does not change the resulting support obligation.

### III. Discussion

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

The first issue raised by Mr. H. concerns the inclusion of overtime in his support obligation. Child support awards are based on adjusted annual income.<sup>13</sup> This includes overtime pay.<sup>14</sup> An unusually high amount of overtime in one year might be excluded from the calculations in some situations.<sup>15</sup> That question does not need to be decided in this case because Mr. H.'s support will be calculated based on his 2010 income rather than the 2009 income. Mr. H. continues to earn some overtime pay. A reasonable projection of Mr. H.'s annual income can be based on his earnings for the first four months of the year.<sup>16</sup> This includes a projection that he will continue to earn varying amounts of overtime over the remainder of the year, and that the average amount per pay period for the remainder of the year will match the average amount for the first eight pay periods of the year.

The next issue raised by Mr. H. is his request for income averaging. Income averaging is permitted in appropriate situations, such as when the obligor parent has erratic income.<sup>17</sup> This is not an appropriate case to use income averaging. Mr. H. has been steadily employed at his current job for over a year. Now that he has increased his earning capacity by becoming a heavy

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

<sup>11</sup> Alaska Statute AS 25.27.190(e).

<sup>12</sup> Alaska Regulation 15 AAC 125.321(d).

<sup>13</sup> Civil Rule 90.3(a).

<sup>14</sup> Civil Rule 90.3, Commentary III.A.1.

<sup>15</sup> Civil Rule 90.3, Commentary VI.B.9.

<sup>16</sup> Civil Rule 90.3, Commentary III.E.

<sup>17</sup> Civil Rule 90.3(c)(1); Civil Rule 90.3, Commentary III.E.

equipment mechanic, he is likely to continue earning income at his current rate and is able to make ongoing child support payments out of this income.

The final issue concerns the health insurance payments made by Mr. H. He is entitled to credit for payments that are actually made.<sup>18</sup> Because health insurance premiums change, the support order is not reduced to reflect this credit. Instead, Mr. H. should provide proof of these payments to CSSD and he will receive a credit for having paid this amount.<sup>19</sup>

As discussed above, Mr. H.'s annual income is expected to be \$33,939. He is also expected to receive a Permanent Fund Dividend check.<sup>20</sup> He is entitled to a credit for the amount he contributes to his 401(k) plan, but only up to the maximum amount of 7.5% of his wages.<sup>21</sup> The updated calculations result in a child support obligation of \$441 per month.<sup>22</sup> This is more than a 15% increase from the prior obligation of \$187 per month.

#### **IV. Conclusion**

There has been a material change in circumstances justifying a modification of the prior Administrative Child Support and Medical Support Order. Mr. H.'s current income represents the best estimate of his future income, so his child support obligation is based on this income. He is entitled to a deduction for payments to his 401(k) plan.

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

- Mr. H. is liable for modified child support in the amount of \$441 per month effective January 1, 2010.
- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order of March 23, 2010 remain in full force and effect.

DATED this 24<sup>th</sup> day of May, 2010.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>18</sup> Civil Rule 90.3(d)(1).

<sup>19</sup> 15 AAC 125.432.

<sup>20</sup> The amount of the 2009 PFD check is used as an estimate of the amount he will receive in 2010.

<sup>21</sup> Civil Rule 90.3(a)(1)(B).

<sup>22</sup> Exhibit 7, page 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 11<sup>th</sup> 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.]