

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

IN THE MATTER OF: )  
 )  
C. K. ) OAH No. 10-0237-CSS  
 ) CSSD No. 001150768  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The obligor, C. K., requested a modification of his child support obligation. The custodial parent is O. R. O. The children in this case are E. K., age 13, and F. K., age 9.

The Child Support Services Division (CSSD) denied the request for modification March 23, 2010, and Mr. K. appealed.

A hearing was held on May 25, 2010. The Administrative Law Judge assigned to this matter was unavailable, so a different ALJ was assigned. Neither party objected to the reassignment.

Child Support Specialist Andrew Rawls represented CSSD. Mr. K. attended the hearing by telephone and was represented by counsel, Jerald Reichlin, who appeared in person. Ms. O. also appeared at the hearing in person.

Based on the evidence presented at the hearing, a material change of circumstances exists justifying a modification in Mr. K.'s child support obligation.

**II. Facts**

*A. Background*

An Administrative Child Support and Medical Support Order was entered on March 8, 2008, establishing a support obligation of \$375 per month for one child and \$507 per month for two children.<sup>1</sup> Mr. K. filed a request for modification.<sup>2</sup> Notice of the Petition for Modification of Administrative Support Order was mailed to the parties on December 18, 2009.<sup>3</sup> Mr. K.'s modification request was denied on March 23, 2010 because he had not documented his income.<sup>4</sup> Mr. K. has now appealed stating that there is only temporary work available to him and the

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 3.  
<sup>3</sup> Exhibit 4, pages 2 & 4.  
<sup>4</sup> Exhibit 5.

current support obligation is beyond his ability to pay.<sup>5</sup> At the hearing, Exhibits 1 through 8 were admitted without objection.

*B. Material Facts*

Mr. K. lives in No Name, Alaska.<sup>6</sup> In 2007 he worked as an equipment operator for an airport project and earned over \$38,000.<sup>7</sup> This was not a typical year for him, however. He testified that he is currently working a temporary job watching the generator. He also hopes to be employed by Bristol Bay Housing Authority for a period of time starting this summer, but is uncertain how long that work might last.

Mr. K.'s annual income in 2009 included \$1,870 in wages from the Native Village of P.,<sup>8</sup> and \$6,000 from fishing.<sup>9</sup> Also in 2009, Mr. K. earned \$75.60 in dividends from the Bristol Bay Native Corporation,<sup>10</sup> and \$2,990 in unemployment benefits.<sup>11</sup>

Mr. K. testified that in 2008 he did not go fishing because he was working in town. He earned \$19,511.34 in wages that year,<sup>12</sup> plus he earned \$70.50 in Bristol Bay Native Corporation dividends,<sup>13</sup> and \$759.60 in unemployment benefits.<sup>14</sup>

During the hearing, Mr. K. was also questioned about his monthly living expenses. Based on the answers to those questions, CSSD calculated that Mr. K. is spending \$2,416 per month. According to CSSD, this meant that he must be earning at least that much. There are two problems with CSSD's approach that preclude a finding of fact that Mr. K. earns \$2,416 per month. First, he was not paying for all of the expenses that were accruing. For example, he testified that a February 2009 electric bill was \$184.04, but he also testified that he owed over \$1300 on his electric bill. In addition, Mr. K.'s testimony as to his expenses was not convincing. While he tried to accurately answer the questions he was asked, it was clear that he was making at best a very rough guess as to what he might have spent recently. This testimony was not

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<sup>5</sup> Exhibit 6, page 1.

<sup>6</sup> Exhibit 6, page 5.

<sup>7</sup> Exhibit 6, page 5.

<sup>8</sup> Exhibit 7, page 1.

<sup>9</sup> Exhibit 8, page 2.

<sup>10</sup> Exhibit 8, page 4.

<sup>11</sup> Exhibit 7, page 3.

<sup>12</sup> Exhibit 7, page 1.

<sup>13</sup> Exhibit 8, page 4.

<sup>14</sup> Exhibit 7, page 3.

sufficient to establish Mr. K.'s monthly expenses, so it was also not sufficient to conclude that he earns that much.

Mr. K. also testified that he had received approximately \$12,000 in Exxon settlement funds; \$10,000 had been garnished to pay child support arrears and he received \$2,000. Child support obligations are calculated as a percentage of income to be earned while support is paid.<sup>15</sup> Mr. K. will not receive similar payments in the future. This lump sum amount is more like a one-time gift or inheritance and will not be considered in determining Mr. K.'s expected income for 2010 and beyond.<sup>16</sup>

### **III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>17</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>18</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>19</sup>

Mr. K.'s income pattern is not unusual for someone living in rural Alaska. He takes advantage of temporary income opportunities as they arise. This makes his income erratic, so the best estimate of what he will earn in 2010 and beyond is an average of his last two years' income. In 2008, he earned \$19,511.34 in wages. In 2009, he earned \$7,870 in wages and fishing income. The average of these two years is \$13,690.67. He also received an average of \$1,874.80 in unemployment benefits each year, and an average of \$73.05 in Bristol Bay Native Corporation dividends.

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<sup>15</sup> Civil Rule 90.3, Commentary III.E.

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

<sup>17</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>18</sup> Alaska Statute AS 25.27.190(e).

<sup>19</sup> Alaska Regulation 15 AAC 125.321(d). In this case, the notice was issued on December 18, 2009, so the modification is effective January 1, 2010. See Exhibit 4.

When these averages are placed into the on-line child support calculator available at [www.childsupport.alaska.gov](http://www.childsupport.alaska.gov) , it results in a support obligation of \$251 per month for one child and \$339 per month for two children.<sup>20</sup> This is more than a 15% change from the prior support award so there is a material change of circumstances justifying a modification of Mr. K.'s support obligation.

**IV. Conclusion**

There has been a material change of circumstances justifying a modification of Mr. K.'s child support award. Because his income varies from year to year, using his 2009 income alone would not be a good estimate of his future earnings. Accordingly his support obligation will be based on his average earnings over a two year period. This results in a support obligation of \$251 per month for one child and \$339 per month for two children.

**V. Child Support Order**

- Mr. K. is liable for modified child support in the amount of \$339 per month for two children effective January 1, 2010.
- All other provisions of CSSD's Administrative Child Support and Medical Support Order of March 8, 2008 remain in full force and effect.

DATED this 28<sup>th</sup> day of May, 2010.

By: Signed \_\_\_\_\_  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>20</sup> Attachment A to this decision.

## 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 14<sup>th</sup> day of June, 2010.

By: Kay L. Howard for  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

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