

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

IN THE MATTER OF:)
)
 G. Q.) OAH No. 10-0246-CSS
) CSSD No. 001122758
_____)

DECISION AND ORDER

I. Introduction

The obligor parent in this matter is G. Q. The child in this matter is A. Q., who is 9 years old. The custodian is A.'s grandmother, N. Q.

A hearing was scheduled for May 27, 2010. At the time set for the hearing the custodian, N. Q., was called at her phone number as shown in the record. No one answered that phone. Mr. Q. was called at the number he provided for this hearing. He was also called at two other numbers. Two voice mail messages were left for Mr. Q. advising him to contact the Office of Administrative Hearings within ten days if he wished to participate in the hearing and that otherwise, a hearing would be held on the written record. Shortly thereafter, Ms. J. Q. contacted the Office of Administrative Hearings. She assisted in contacting N. Q. and served as a translator. With this assistance, Ms. N. Q. appeared at the hearing by phone. Child Support Specialist Andrew Rawls represented the Child Support Services Division (CSSD).

Mr. Q. has not contacted the Office of Administrative Hearings to show reasonable cause for not appearing, so this decision is issued without taking evidence from him.¹ Based on the evidence in this case, there is no material change of circumstances justifying a modification of Mr. Q.'s child support obligation.

II. Facts

A. Background

On May 17, 2004, CSSD set Mr. Q.'s support obligation at \$166 per month.² CSSD issued a Notice of Petition for Modification of Administrative Support Order on January 5, 2010.³ A Modified Administrative Child Support and Medical Support Order was issued on

¹ 15 AAC 05.030(j).

² Exhibit 1.

³ Exhibit 2.

April 13, 2010, setting Mr. Q.'s support obligation at \$255 per month effective February 1, 2010.⁴ Mr. Q. appealed that decision.⁵ The appeal paperwork appears to have been damaged in the mail and some of the writing could not be read. Enough of this letter can be read to see that Mr. Q. is asserting he is unable to pay child support because he is unemployed.

B. Material Facts

According to the testimony of N. Q., Mr. Q. is currently unemployed. She stated that he had a job in the past, but did not have one now. She does not know why he lost his previous job. Mr. Q. did earn \$9,149.79 in wages during 2008, and \$2,184.09 in wages during 2009.⁶ He also received unemployment benefits of \$2,004 in 2008 and \$2,670 in 2009.⁷

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 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

A parent's support obligation is calculated based on a percentage of income that will be earned when the support is paid.¹¹ The estimate of what that income will be is made by examining all available evidence and making the best possible calculation.¹² CSSD issued the modified support order based on an assumption that Mr. Q. would work full time at minimum wage. CSSD stated:

⁴ Exhibit 3.

⁵ Exhibit 4.

⁶ Affidavit of Erinn Brian, page 1.

⁷ Affidavit of Erinn Brian, page 2.

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 Civil Rule 90.3, Commentary III.E.

¹² Civil Rule 90.3, Commentary III.E.

Mr. Q. does not reside in an area that is considered to be economically distressed and jobs are available. Therefore the income calculation for 2010 was based on the Alaska Minimum Wage of \$7.75 per hour, multiplied by 2080 for full-time employment and the Alaska Permanent Fund Dividend.^[13]

Full-time minimum wage employment results in annual wages of \$16,120.¹⁴ This is significantly more than Mr. Q. earned in either 2008 or 2009.

There has been no written finding that Mr. Q. is voluntarily unemployed or underemployed.¹⁵ Thus, there is no basis to impute to him income that he does not earn. Instead, Mr. Q.'s support calculation must be based on the total annual income he is likely to earn using the best available information.¹⁶ Best available information includes:

- (1) the parent's current income as of the date of the agency's calculation of support, as reflected in recent pay stubs or other information from the parent or parent's employer;
- (2) the parent's actual income during the immediately preceding calendar year or, if the parent's income is erratic or information is not available for the immediately preceding calendar year, the parent's actual income during prior calendar years;
- (3) partial wage information for periods of less than one year;
- (4) the parent's wage rate at a previous job;
- (5) the parent's job skills, training, work history, and education;
- (6) the average wage or salary available to a person in the parent's particular profession or occupation and, if applicable, location;
- (7) the availability of employment in the area where the parent physically resides;
- (8) the minimum wage for the area in which the parent physically resides; and
- (9) any physical or other restrictions on the parent's ability to work.^[17]

Most of this information is not available. There is evidence of what Mr. Q. has earned in the past however. The best available evidence of what he is likely to earn is what he has actually earned in the past. Because his earnings are erratic, an average of the last two years' income is a better estimate of what he will earn than just his wages from 2009. Over the last two years, Mr. Q. has received wages and unemployment benefits of, on average, \$8,003.94 per year.¹⁸ Using

13 Exhibit 3, page 4 – 5.

14 Exhibit 3, page 6.

15 See 15 AAC 125.090(a)(2).

16 15 AAC 125.050(c).

17 15 AAC 125.050(c).

18 $(\$9,149.72 + \$2,184.09 + \$2,670 + \$2004) \div 2$.

the online child support calculator available at www.childsupport.alaska.gov , this amount of wages, plus a Permanent Fund Dividend Check, results in a monthly child support obligation of \$144 per month. This is not more than 15% less than the current obligation of \$166 per month.

IV. Conclusion

Because the newly calculated child support award is not more than 15% less than the current obligation, there is no presumption of a material change of circumstances.¹⁹ There is no other showing of a material change of circumstances, so Mr. Q.'s child support obligation is not modified.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order of April 13, 2010 is VACATED.
- Mr. Q.'s child support obligation remains at \$166 per month.
DATED this 8th day of June, 2010.

By: *Signed* _____
Jeffrey A. Friedman
Administrative Law Judge

¹⁹ Civil Rule 90.3(h)(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 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.]