

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

IN THE MATTER OF:)	
)	OAH No. 10-0266-CSS
A. J. S.)	CSSD No. 001150764
_____)	

DECISION AND ORDER

I. Introduction

The obligor, A. J. S., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on April 12, 2010. The Obligee children are J., 6; E., 5; and T., 3. The custodian is K. E. G.

The formal hearing was held on June 16, 2010. Both Mr. S. and Ms. G. appeared by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on June 16, 2010.

Based on the record and after careful consideration, CSSD’s April 12, 2010, the Modified Administrative Child Support and Medical Support Order is affirmed.

II. Facts

A. History

Mr. S.’s child support obligation for T. was set at \$56 per month in January 2008.¹ On January 21, 2010, CSSD issued a notice initiating a modification review so as to add J. and E. to Mr. S.’s child support order.² On April 12, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. S.’s child support to \$50 per month for all three children, effective February 1, 2010.³ Mr. S. appealed on April 29, 2010, asserting he is incarcerated and does not have any money with which to pay support.⁴

B. Material Facts

Mr. S. is currently incarcerated at the Hudson Correctional Facility in Colorado. He has been in jail since 2007 and expects to be released on July 17, 2015, although if he wins his

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.

appeal, Mr. S.'s release could be sooner. He was transferred from Alaska to the Hudson facility on March 28, 2010 and although he has been trying to find a job in the prison, there is nothing for him there at this time.

III. Discussion

CSSD calculated Mr. S.'s modified child support at \$50 per month for three children, based on his incarceration.⁵ Mr. S. is not challenging having a support order, but he argues that he does not have a job so there is no way that he can pay his child support. Ms. G. indicated she wants to take Mr. S. off of child support because he doesn't have any money. She was informed that she should discuss this issue with her caseworker and if she still wants to close her case at that time she would have to file a written notarized statement of withdrawal from services.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁶ 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. Adding other children to a child support order is a material change in circumstances that would justify modifying the child support order even though the newly calculated support amount may not be more than a 15% change.⁷ A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of February 1, 2010.⁸

As the person who filed the appeal in this case, Mr. S. has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.⁹

CSSD calculated Mr. S.'s modified child support amount at \$50 per month for three children, based on his incarceration.¹⁰ CSSD's calculation is correct. Even though Mr. S. is incarcerated and cannot earn enough income to pay his child support at this time, his child support obligation must remain in place. A child support order of \$50 per month is the minimum

⁵ Exh. 3 at pg. 6.

⁶ AS 25.27.190(e).

⁷ See 15 AAC 125.321(b)(2)(B).

⁸ 15 AAC 125.321(d). In this case, the notice was issued on January 21, 2010. Exh. 2.

⁹ 15 AAC 05.030(h).

¹⁰ Exh. 3 at pg. 6.

allowed under Alaska law, and it may not be reduced below that amount.¹¹ The \$50 per month minimum order has been upheld by the Alaska Supreme Court, which stated that a non-custodial parent may lack the present ability to pay an ongoing child support amount, and may even be indigent due to incarceration, but that will not excuse the child support obligation.¹² Thus, Mr. S.'s child support order cannot be lowered below \$50 per month, nor can it be deferred until his release. His support obligation will continue to accrue on a monthly basis and Mr. S. can start repaying the arrears upon his release.

IV. Conclusion

Mr. S. did not meet his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Mr. S. is incarcerated on a long-term basis so his child support should be set in the minimum amount of \$50 per month for three children.

V. Child Support Order

- The April 12, 2010 Modified Administrative Child Support and Medical Support Order is affirmed;
- Mr. S.'s child support is modified to \$50 per month for three children, effective February 1, 2010 and ongoing.

DATED this 17th day of June, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹¹ Civil Rule 90.3(c)(1)(B).

¹² *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

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 6th day of July, 2010.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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