

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

IN THE MATTER OF:)

Q. J. C.)

) OAH No. 10-0272-CSS

) CSSD No. 001155689

DECISION AND ORDER

I. Introduction

The obligor, Q. J. C., appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on April 20, 2010. The obligee child is C. J. M. who is 2 years old. The custodian of record is Q. A. M.

A hearing was held on June 17, 2010. Ms. M. participated by phone. CSSD was represented in person by Child Support Specialist Erinn Brian. Mr. C. was called at the number available in the file for him. A recording was reached, but it was not possible to leave a voice mail message. Ten days were allowed to give Mr. C. an opportunity to come forward and show good cause for not having appeared at the hearing.¹ That time period has elapsed and a decision is now issued without his testimony.

II. Facts

A. Background

An Amended Administrative Child and Medical Support Order was issued on September 11, 2009, setting ongoing child support in the amount of \$251 per month for one child.² Mr. C. requested modification on January 15, 2010.³ A Notice of Petition for Modification of Administrative Support Order was mailed to the parties on February 19, 2010.⁴ A Modified Administrative Child Support and Medical Support Order was issued by CSSD on April 20, 2010.⁵ This order set the ongoing child support obligation at \$296 per month. Mr. C. appealed

¹ 15 AAC 05.030(j).

² Exhibit 1.

³ Exhibit 2.

⁴ Exhibit 3.

⁵ Exhibit 5.

that decision.⁶ He states that 1) he earned substantially less money in 2009 than is attributed to him by CSSD; 2) he has an older child in another child support case; 3) he is currently unemployed; 4) he has no income; and 5) he expected both of his cases to be combined and considered together.

B. Material Facts

Because Mr. C. did not appear for the hearing, the evidence in this case is limited. His 2009 tax return shows total wages of \$6,485.⁷ His W-2 statement for the same year shows \$6466.65.⁸ Mr. C. also submitted a pay stub showing a pay rate of \$11 per hour.⁹ This pay stub shows the employee name of J. R. at a different mailing address, and it is not clear why Mr. C. submitted this document.

In Mr. C.'s other child support case, CSSD took the position that Mr. C.'s support obligation should be based on his 2009 Federal Income Tax Return.¹⁰

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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."¹² 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 modify the child support obligation, but 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.¹³ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁴

⁶ Exhibit 6.

⁷ Exhibit 4, page 9.

⁸ Exhibit 4, page 7.

⁹ Exhibit 4, page 7.

¹⁰ Pre-hearing brief in OAH No. 10-0227-CSS.

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² AS 25.27.190(e).

¹³ 15 AAC 125.321(d).

¹⁴ 15 AAC 05.030(h).

Child support should be set based on the estimated income that will be earned when the payments are made.¹⁵ CSSD asserted that this estimate should be based on the assumption that Mr. C. will earn \$11 per hour. There are two problems with this assumption. First, the pay stub relied on is for a different person. There is no evidence showing that Mr. C. earned \$11 per hour at his previous employment. Second, CSSD took the position in Mr. C.'s other child support case that his income should be based on Mr. C.'s 2009 earnings. It is preferable for CSSD to take consistent positions in regards to the same obligor or explain why a different position is asserted.

Although Mr. C. has asserted that he is unemployed, he has also attached paystubs showing that he has earned a small amount of money in 2010.¹⁶ His income may be sporadic, but there is no reason to believe he won't be able to earn at least what he was able to earn in 2009.¹⁷ That amount is less than one-half of what he could make working full time at minimum wage. Consistent with the position taken by CSSD at the prior child support hearing, Mr. C.'s support obligation is based on his W-2 statement showing \$6466.65 in wages. Using the calculator available at www.childsupport.alaska.gov, and after giving Mr. C. credit for support payments made for a child from a prior relationship, this results in an ongoing support obligation of \$70 per month.¹⁸

IV. Conclusion

There is a material change of circumstances justifying a modification of Mr. C.'s child support obligation. His earnings from 2009 provide the best available estimate of what he will earn in the future. Based on that amount, his support obligation is \$70 per month for one child.

V. Child Support Order

- Mr. C.'s child support obligation is set in the amount of \$70 per month for one child, C. J. M., effective March 1, 2010.

¹⁵ Civil Rule 90.3, Commentary III.E.

¹⁶ Exhibit 6, page 4.

¹⁷ Given that Mr. C.'s mailing address is in Arizona, it is not assumed that he will receive a Permanent Fund Dividend check. This is consistent with CSSD's calculation shown on Exhibit 5, page 6.

¹⁸ Attachment A.

- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated April 20, 2010, remain in full force and effect.

DATED this 30th 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 19th day of July, 2010.

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

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