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

IN THE MATTER OF:	)	
	)	OAH No. 10-0273-CSS
J. T. S.	)	CSSD No. 001135969
	)	

DECISION AND ORDER

I.   Introduction

The obligor, J. T. S., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 17, 2010. The obligee child is R. B. K., who is five years old. The custodial parent is R. L. K.

A hearing was held on June 17, 2010. Child Support Specialist Andrew Rawls represented CSSD in person. Mr. S. appeared by phone. Ms. K. was called at the number available in the file, but the person answering the phone said it was a wrong number. The record in this matter was left open for 10 days to give Mr. S. time to submit information concerning his union dues and retirement contributions.

Based on the record, and after due deliberation, Mr. S.'s child support is modified and set as discussed below.

II.   Facts

A.   Background

Mr. S.'s child support obligation was set at $408 per month in 2006.[1] Ms. K. requested a modification on January 6, 2010.[2] Notice of Petition for Modification of Administrative Support Order was mailed on February 5, 2010.[3] A Modified Administrative Child Support and Medical Support Order was issued on April 17, 2010.[4] This modified order set child support at $1037 per month effective March 1, 2010. Mr. S. appealed CSSD's modification order.[5]

1	Exhibit 1.
2	Exhibit 2.
3	Exhibit 3.
4	Exhibit 4.
5	Exhibit 5.

Subsequent to the hearing, Mr. S. submitted his most recent pay stub.[6] He also indicated that his union dues are 2% of his wages.[7] CSSD provided a new calculation indicating that Mr. S.'s child support obligation should be set at $1,010 per month.[8]

B. Material Facts[9]

Mr. S. is employed as an operator for a power plant. He works a seven day shift, 12 hours per day every other week. In 2009, Mr. S. earned $82,117.56. This included $22,203.17 in overtime pay and $5,189.12 in other earnings.[10] Mr. S. testified that there was an unusual amount of overtime pay in 2009 because there were several retirements and people out injured or sick. He testified that overtime is not guaranteed and that he expects to earn less overtime this year and in the future, though he could not say how much he would earn.

While Mr. S.'s testimony about expected overtime was credible, he is actually on track to earn as much or more than he did in 2009. As of June 19, 2010, Mr. S.'s gross pay was $41,479.46.[11] Since this is just under one-half of an entire year, Mr. S.'s annual income should be approximately $83,000.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.[12] 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."[13] 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.[14]

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6   Exhibit 7, page 2.
7   Exhibit 7, page 1.
8   Exhibt 8.
9   These facts are based on Mr. S.'s testimony unless otherwise noted.
10   Exhibit 5, page 3.
11   Exhibit 7, page 2.
12   *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.
13   AS 25.27.190(e).
14   15 AAC 125.321(d).

Child support obligations are based on the amount the obligor is likely to earn when the payments are made.[15] Where an obligor's income is erratic, past income from several years may be averaged to estimate future income.[16] Mr. S.'s income is not erratic, however. While the amount of overtime may vary each month, his overall income in 2010 is likely to be substantially the same as his 2009 income. Thus, his child support obligation should be based on his expected income as shown by his 2009 income.

Mr. S. is entitled to a credit for the amount he pays in union dues.[17] These dues average $136.86 per month. With this adjustment, Mr. S.'s support obligation would be $1,010 per month.[18]

IV.   Conclusion

Mr. S.'s income during 2010 is likely to be substantially the same as his 2009 income. Based on that income, and a permanent fund dividend check, Mr. S.'s support obligation is set at $1,010 per month.

V.   Child Support Order

- Mr. S.'s child support obligation is set at $1,010 per month for one child effective March 1, 2010.

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 17, 2010 remain in full force and effect.

DATED this 29th day of June, 2010.

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

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[15]   Civil Rule 90.3, Commentary III.E.
[16]   Civil Rule 90.3, Commentary III.E.
[17]   Civil Rule 90.3(a)(1)(A)(iv).
[18]   Exhibit 8.

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.]