

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

IN THE MATTER OF:)
)
 M. A. S.) OAH No. 10-0283-CSS
) CSSD No. 001109448
_____)

DECISION AND ORDER

I. Introduction

The custodial parent, J. T., requested a modification of an existing child support order. The obligor, M. A. S., appealed the Modified Administrative Child Support and Medical Support order issued by the Child Support Services Division (CSSD). The obligee child is N. T., who is nine years old.

A hearing was held on June 30, 2010. Both parents participated by phone except that the connection with Ms. T. was lost during the hearing. An attempt to reconnect by phone was unsuccessful. Child Support Specialist Andrew Rawls appeared in person on behalf of CSSD.

II. Facts

A. Background

An Administrative Child Support and Medical Support Order was issued in March of 2005 setting Mr. S.'s support obligation at \$294 per month.¹ Ms. T. requested a modification of that order.² A Notice of Petition for Modification of Administrative Support Order was mailed on April 5, 2010.³ A modified Administrative Child Support and Medical Support Order was issued on May 17, 2010, setting Mr. S.'s support obligation at \$399 per month.⁴ Mr. S. appealed.⁵

At the conclusion of the hearing, the record was left open to allow CSSD to obtain additional information about Mr. S.'s income from his employer. CSSD submitted a Post Hearing Brief along with Exhibits 7 and 8.

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

B. Material Facts

Mr. S. testified that he is a seasonal construction worker who is a member of the Laborers' Union. He contributes 3% of his gross wages for union dues.⁶ In 2009, he earned \$21,982.07 in gross wages and received \$4,368.40 in unemployment benefits.⁷ Mr. S.'s gross wages from his current employer from April of 2010 through June 20, 2010 were \$11,845.99.⁸

Mr. S.'s income has been fairly stable over the years. He earned \$20,964.67 in 2006, \$27,333.40 in 2007, and \$23,971.92 in 2008.⁹ While he tends to earn more during the summer construction season, his quarterly earnings are varied from year to year, making it difficult to project annual earnings from any partial year's wages.

A collective bargaining agreement between Associated General Contractors of Alaska and Laborers' Local 341 indicates that money contributed towards retirement is paid by the employer in addition to wages and is not an amount paid by the employee from his wages.¹⁰ This plan also confirms that 3% of gross wages are deducted from each employee to pay union dues.

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

⁶ CSSD's Post Hearing Brief.

⁷ Exhibit 6, pages 1 and 3.

⁸ Exhibit 7.

⁹ Exhibit 6, page 1.

¹⁰ This document is available on line at <http://www.local341.com/Forms/tabid/59/Default.aspx>. Pursuant to 2 AAC 64.300, Official Notice is taken that the retirement contribution is paid for by the employer and is not deducted from the employee's wages. A party objecting to taking notice of this fact may file a written objection within 10 days. A party may request a reasonable amount of time to refute the officially noticed facts.

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

¹² AS 25.27.190(e).

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

Mr. S. has met his burden of demonstrating that CSSD's proposed modification is incorrect. CSSD's calculations did not include union dues that are deducted from his paycheck.¹⁵ As a union employee, this amount will remain a constant 3% regardless of which employer hires him.

Recalculation of Mr. S.'s obligation should be based on the amount he is expected to earn when the support is paid.¹⁶ In its post-hearing brief, CSSD proposes using a three year average to estimate the amount Mr. S. will earn. Mr. S.'s income is not so erratic as to make income averaging necessary. His income from 2009 is a reasonable estimate of what he will be able to earn this year and in the future. His income from this year is not used to project his annual income because it is unclear how long his current job will last or when he would obtain his next job. What does appear from the evidence, however, is that Mr. S. regularly earns income in the \$20,000 to \$23,000 range, and is likely to continue earning similar amounts.¹⁷

Based on his 2009 income, unemployment benefits, and permanent fund dividend check, and giving him a deduction for union dues, Mr. S.'s support obligation would be \$381 per month, as shown in Attachment A.

IV. Conclusion

Mr. S.'s support obligation should be set based on his 2009 income. He is, however, entitled to a deduction for the union dues he pays. The support obligation of \$381 per month is more than 15% greater than the prior support award, so modification is appropriate. Because child support is based on annual income, and because his employment is seasonal, Mr. S. will need to budget for these payments so he does not fall behind during periods of unemployment.

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¹³ 15 AAC 125.321(d).

¹⁴ 15 AAC 05.030(h).

¹⁵ Union dues are an allowable deduction. Civil Rule 90.3(a)(1)(A)(iv).

¹⁶ Civil Rule 90.3, Commentary III.E.

¹⁷ He did earn \$27,000 in 2007, but that is not typical of his earning pattern.

V. Child Support Order

- Mr. S.'s child support obligation is set at \$381 per month effective May 1, 2010.
- All other terms of the May 17, 2010 Modified Administrative Child Support and Medical Support Order remain in effect.

DATED this 9th day of July, 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 26th day of July, 2010.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief Administrative Law Judge
Title

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