

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

IN THE MATTER OF:)
)
Z. M.) OAH No. 10-0298-CSS
) CSSD No. 001152723
_____)

DECISION AND ORDER

I. Introduction

Z. M. appeals the decision of Child Support Services Division (CSSD) to deny a request to modify an Administrative Child Support and Medical Support Order. Mr. M. is the obligor parent. J. H. is the custodian, and the obligee child is C. M. H.

A hearing was held on July 6, 2010. Ms. H. appeared by phone. Mr. M. was present in person. Child Support Specialist Erinn Brian appeared in person for CSSD.

The record was held open at the conclusion of the hearing to allow CSSD to submit additional calculations. The other parties were also invited to submit any additional information. The record closed on July 21, 2010, and CSSD has submitted its additional calculations. Based on the evidence in the record, Mr. M.'s child support obligation should be modified and set at \$264 per month.

II. Facts

A. Background

An Administrative Child Support and Medical Support Order was issued on July 31, 2008, setting Mr. M.'s support obligation at \$412 per month.¹ Mr. M. requested modification of that order,² and a Notice of Petition for Modification of Administrative Support Order was mailed to the parties on February 22, 2010.³

CSSD denied Mr. M.'s request for modification.⁴ CSSD assumed that Mr. M. could be earning \$15 per hour, for 40 hours per week, which would result in a child support obligation of

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

\$448 per month.⁵ This is only 9% greater than the previous support order and, therefore, not presumptive grounds to support a modification. Mr. M. appealed that decision arguing that he earns substantially less money than the amount projected by CSSD.⁶

B. Material Facts

Mr. M. testified that he currently works as a flight instructor. He also flies sightseeing trips. He is paid \$15 per hour for ground instruction and \$24 per hour for flight time. During one month the owner of the flight school is on vacation, and Mr. M. earns \$12 per hour for the time spent overseeing the business.

Mr. M. explained that the amount of work available depends on the number of clients seeking his services. He makes himself available up to six days each week, but does not have full time work. He hopes to eventually be re-hired at No Name Airways, but does not know when that might occur.

In 2008, Mr. M. earned \$15,751 in wages.⁷ In 2009 he only earned \$3,621 in wages.⁸ According to his testimony at the hearing, Mr. M. had some personal problems which prevented him from working during much of that year. He is now able to work full-time, to the extent work is available. During the first quarter of 2010, Mr. M. earned \$4,209.30.⁹ In its Post Hearing Brief, CSSD refers to the amount Mr. M. earned in the second quarter of 2010, but there is no admissible evidence in the record to support that figure.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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."¹¹ 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

⁵ Exhibit 5, page 3.

⁶ Exhibit 6, page 1.

⁷ Exhibit 6, page 5 (tax return submitted by Mr. M.1); Exhibit 7, page 1 (Dept. of Labor records).

⁸ Exhibit 6, page 9; Exhibit 7, page 1.

⁹ Exhibit 7, page 1.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ AS 25.27.190(e).

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.¹² Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹³

In denying the modification, CSSD assumed that Mr. M. would earn \$15 per hour, 40 hours each week. The financial records submitted by Mr. M., however, showed that he was working less than 40 hours per week.¹⁴ Those records had been submitted in response to the Notice of Petition for Modification of Administrative Support Order. Absent a written finding that Mr. M. is voluntarily and unreasonably unemployed or underemployed, there is no legal basis to impute income to him.¹⁵ Instead, the child support calculation must be based on what he is likely to earn.¹⁶ Mr. M.'s financial records, as well as his testimony at the hearing, show that he is unlikely to work 40 hours per week. There is also no basis in the record to find that his reduced work schedule is voluntary and unreasonable.¹⁷

Mr. M.'s first quarter wages were \$4,209.30. Extrapolating from this figure, his annual wages would be \$16,837. Using CSSD's online child support calculator,¹⁸ and including an annual Permanent Fund Dividend check, this results in a support obligation of \$264 per month.¹⁹ This amount is more than 15% less than the prior child support obligation, and there is, therefore, a material change in circumstances justifying this modification.

Based on the testimony at the hearing, the parties now share custody and the Superior Court has jurisdiction of the child support amount as of May 2010. Accordingly, this order will only be effective for March and April of 2010.²⁰

12 15 AAC 125.321(d).

13 15 AAC 05.030(h).

14 Exhibit 4, pages 7 – 9.

15 15 AAC 125.060, 15 AAC 125.090.

16 Civil Rule 90.3, Commentary III.E.

17 Civil Rule 90.3(a)(4).

18 Available at www.childsupport.alaska.gov .

19 Attachment A.

20 Administrative support modifications become effective as of the month after the notice is mailed to the parties.

IV. Conclusion

Mr. M. has met his burden of proving that CSSD’s initial decision to deny a modification was incorrect. Based on the evidence in the record, his child support should be modified and set at \$264 per month for one child, effective March 1, 2010.

V. Child Support Order

- Mr. M.’s child support obligation is set at \$264 per month for March 2010 and April 2010.
- Mr. M.’s ongoing child support obligation will be set by the Superior Court effective May 1, 2010.
- All other provisions of the Administrative Child Support and Medical Support Order dated July 31, 2008 remain in effect.

DATED this 26th day of July, 2010.

By: Christopher Kennedy for
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 18th day of August, 2010.

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

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