

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

In The Matter of:)
)
R. J. C.) OAH No. 10-0314-CSS
) CSSD No. 001155548
_____)

DECISION AND ORDER

I. Introduction

The custodian, R. L. L., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. C.'s case on April 28, 2010. The obligee child is D., 1½ years old.

The formal hearing was held on July 22, 2010. Ms. L. appeared by telephone; Mr. C. did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on July 22, 2010.

Based on the record and after due deliberation, CSSD's Modified Administrative Child Support and Medical Support Order is vacated. Although Mr. C. submitted tax returns for 2008 and 2009, there is insufficient evidence in the record to establish that he has had a material change in circumstances such that his child support should be modified. Mr. C.'s child support shall remain at \$249 per month, as set in 2009.

II. Facts

Mr. C.'s child support obligation for D. was set at \$249 per month on June 11, 2009.² On August 20, 2009, Mr. C. requested a modification review.³ On September 8, 2009, CSSD issued a Notice of Petition for Modification of Administrative Support Order and requested income information.⁴ Mr. C. provided 2008 and 2009 tax returns and child support guideline affidavits.⁵ On April 28, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. C.'s child support down to \$50 per month, effective

¹ Mr. C. did not appear for the hearing so a telephone call was placed to his contact number. A man identifying himself as Mr. C.'s father said the obligor was not at home and he did not know how to reach his son.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

October 1, 2009, because he was incarcerated.⁶ Ms. L. filed an appeal on June 9, 2010, alleging that Mr. C. was not currently in jail because he was released on February 4, 2010.⁷

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁸ 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. CSSD may also decline the review if the person who requests it does not provide sufficient evidence to review the underlying child support order.⁹

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁰ The person requesting the hearing, in this case, Ms. L., has the burden of proving that CSSD’s Modified Administrative Child Support and Medical Support Order is incorrect.¹¹

Ms. L. asserts that the obligor is not in jail and he should be working at a job that is “on the books,” meaning a job for which he receives a regular paycheck. Ms. L. testified that Mr. C. works under the table doing odd jobs and that he used to be in a roofing union and also has worked for fencing companies.

Mr. C.’s child support was previously set at \$249 per month for one child in 2009. In connection with the modification review, CSSD set the modified child support amount at \$50 per month, based on the division’s understanding that he was incarcerated at the time.¹² But after the custodian filed her appeal, CSSD verified before the hearing that Mr. C.’s dates of incarceration were from October 27, 2009, through February 4, 2010, a period of just over three months.¹³ CSSD’s representative also filed an affidavit containing the obligor’s earnings

⁶ Exh. 5 at pg. 6.

⁷ Exh. 6.

⁸ AS 25.27.190(e).

⁹ *Id.*

¹⁰ 15 AAC 125.321(d). In this case, the effective date of the modification would be October 1, 2009 because CSSD issued the notice on September 8, 2009. Exh. 3.

¹¹ 15 AAC 05.030(h).

¹² Exh. 5 at pg. 6.

¹³ *See* Pre-Hearing Brief at pg. 1.

history as reported by the Alaska Department of Labor and Workforce Development (DOL). The DOL information indicates Mr. C. most recently worked in 2008 and that his primary employers were U. R., V. F. Co., and K. T. & W.¹⁴ There were no earnings for Mr. C. reported to the DOL for 2009.

While processing the modification, CSSD requested income information from Mr. C., who then submitted tax returns for 2008 and 2009. In the 2008 return, he reported earnings of \$13,325, plus the PFD.¹⁵ Yet the DOL records show that he earned \$15,725.27, roughly \$2,400 more than the income he reported.¹⁶ In his 2009 tax return, Mr. C. again identified himself as a “roofer,” but he reported zero income for the year.¹⁷ Along with the tax returns, Mr. C. filed a statement dated March 1, 2010 that says: “I R. C. am not working at this time due to being in jail.”¹⁸

Mr. C. has not provided enough information to determine if he is eligible for modification of his child support order. The information available at the time of his petition indicated Mr. C. was in jail, so CSSD modified his order to \$50 per month, as is standard practice for an incarcerated obligor. However, it has since been learned that Mr. C. was in jail for only three months and that he was released long before CSSD issued its modification order at the end of April 2010. That does not entitle him to an ongoing minimum order of \$50 per month under Civil Rule 90.3. His support obligation is thus reviewable based on his income, but Mr. C. did not provide any income information. He did not have any reported income for 2009 but did not explain why. Also, he was released in February 2010, more than six months ago, so he has had enough time to obtain some sort of job. Mr. C. has significant experience working for companies that employ manual laborers, particularly during the summer months. Thus, this set of facts raises the possibility that Mr. C. may actually be working under the table, as asserted by Ms. L.

Without more evidence, it is impossible to determine Mr. C.’s present income and his ability to pay child support. Until such time as he provides such evidence, his order to pay \$249 per month should not be modified. His petition for modification review should be denied and

¹⁴ Exh. 7.

¹⁵ Exh. 4 at pg. 1.

¹⁶ Exh. 7.

¹⁷ Exh. 4 at pg. 6.

the Modified Administrative Child Support and Medical Support Order dated April 28, 2010, should be vacated. Mr. C. may request another modification, but CSSD does not have to review his child support order if he does not provide sufficient income information.

IV. Conclusion

Ms. L. met her burden of proving by a preponderance of the evidence that CSSD modified Mr. C.'s child support obligation in error. Mr. C. did not provide evidence sufficient to establish that he is eligible for modification of his child support order. Thus, the modification order issued in Mr. C.'s case should be vacated.

V. Child Support Order

- CSSD's April 28, 2010, Modified Administrative Child Support and Medical Support Order is vacated;
- Mr. C.'s child support for D. remains at \$249 per month;
- All other provisions of the prior order in Mr. C.'s case, the Administrative Child Support and Medical Support Order dated June 11, 2009, remains in full force and effect.

DATED this 13th day of August, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁸ Exh. 4 at pg. 9.

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 7th day of September, 2010.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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