

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

IN THE MATTER OF:)

D. M. W.)

OAH No. 10-0329-CSS

CSSD No. 001134723

DECISION AND ORDER

I. Introduction

The obligor, D. M. W., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on May 21, 2010. The obligee child is D., 5 years of age. The custodian is J. E. G.

The formal hearing was held on August 2, 2010. Mr. W. appeared in person; Ms. G. participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on August 16, 2010.

Based on the record and after careful consideration, Mr. W.’ child support is modified to \$50 per month, effective October 1, 2009, based on his incarceration, and further modified to \$190 per month, effective August 1, 2010, because Mr. W. is currently living in a halfway house and in July 2010 began working full-time at \$10 per hour.

II. Facts

A. Background

Mr. W.’ child support obligation for D. was set at \$651 per month in April 2006.¹ On August 5, 2009, Mr. W. requested a modification review.² On September 8, 2009, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ On March 2, 2010, CSSD denied the modification review, so Mr. W. filed a second petition for modification on March 3, 2010.⁴ After serving another notice on the parties, CSSD issued a Modified Administrative Child Support and Medical Support Order on May 21, 2010, that modified Mr. W.’ child support to \$243 per month, effective April 1, 2010.⁵ Mr. W. filed an appeal on June

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ Exhs. 4 & 5.

⁵ Exh. 8.

22, 2010, claiming that he cannot afford the amount calculated because he does not earn very much and he has to pay 25% of his gross income to the Department of Corrections for his room and board at the halfway house.⁶

At the hearing, CSSD indicated that the agency had mistakenly denied the petition for modification Mr. W. filed on August 5, 2009. CSSD said it was withdrawing the denial the agency issued on March 2, 2010, and that as a result, any modification of his child support should be effective on October 1, 2009.

B. Material Facts

Mr. W. became incarcerated on July 18, 2008. He was housed in a correctional facility until October 2, 2009, at which time he was transferred to the Glenwood Center Halfway House in Anchorage. He later obtained a minimum wage job at a local fast food restaurant for a few hours per day. In mid-July 2010, Mr. W. obtained a new job. He is now working full-time and earning \$10 per hour, but he has mandatory deductions from income in addition to the usual income taxes and Social Security. Mr. W. is required to pay 25% of his gross wages to the Glenwood Center for his room and board, plus \$100 per month for a mandatory savings account. Also, he has to pay a court fine of \$1,300.⁷ Mr. W. expects to be released in November 2011.

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 15% higher or lower than the previous support amount, 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, so this modification is effective as of October 1, 2010.⁹ As the

⁶ Exh. 9.

⁷ Exh. A.

⁸ AS 25.27.190(e).

⁹ 15 AAC 125.321(d). In this case, Mr. W. first petitioned for modification and CSSD issued the notice on September 8, 2009. Exh. 3. CSSD denied his petition but at the hearing withdrew the denial and conceded that the modification should be effective as of October 2009.

person who filed the appeal in this case, Mr. W. has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.¹⁰

CSSD denied Mr. W.’ August 5, 2009, petition for modification. After the denial, Mr. W. filed a second petition for modification and CSSD modified Mr. W.’ child support amount to \$243 per month, based on a full-time wage of \$8 per hour.¹¹ This is the calculation Mr. W. appealed, but it is no longer at issue because CSSD has withdrawn it. CSSD has now proposed that his child support should be modified to \$50 per month, based on his incarceration, effective October 1, 2009.¹²

CSSD’s calculation is correct and should be adopted for the period from October 2009 through July 2010. Mr. W. was moved to the Glenwood Center and began working in late 2009, but his was a minimal job and he earned only a small amount of income, so his child support correctly remained at \$50 per month through that time. However, Mr. W.’ circumstances changed in July 2009, so his child support should be reevaluated. In mid-July 2010, Mr. W. began working at a full-time job paying \$10 per hour, which totals \$20,800 on an annual basis.¹³ Technically, Mr. W. may be incarcerated, but he is now living in the community and earning sufficient annual income to justify further modifying his child support obligation as of August 1, 2010. Under these circumstances, his child support should not be set at the minimum amount of \$50 per month.

When Mr. W.’ current annual income amount of \$20,800 is inserted into CSSD’s online child support calculator,¹⁴ it results in a child support amount of \$190 per month.¹⁵ This calculation includes the mandatory deductions for taxes and Social Security, plus a deduction of \$433.33 per month for the mandatory room and board Mr. W. must pay at the Glenwood

¹⁰ 15 AAC 05.030(h).

¹¹ Exh. 8 at pg. 6.

¹² Post-Hearing Brief at pg. 1.

¹³ A full-time employee working 40 hours per week averages 2,080 hours per year (40 hr. x 52 weeks = 2,080). Thus, someone who makes \$10 per hour would typically earn about \$20,080 per year (2,080 hrs. x \$10 = \$20,080).

¹⁴ The calculator is one of the “Quick Links” located on the right-hand side of CSSD’s home page. The internet address is: “<http://www.childsupport.alaska.gov>”.

¹⁵ Attachment A.

Center¹⁶ and one final deduction of \$100 per month for the deposit to his mandatory savings account. These extra deductions are added together for a total of \$533.33 per month and are located in the deductions section of the calculation on the upper right hand side of the worksheet.¹⁷ Mr. W. also has to pay a court fine of \$1,300, but it cannot be incorporated into the child support calculation the same way his room and board and savings account deductions were included. Mr. W.' fine is separate from his mandatory costs at the halfway house and for child support purposes is simply considered another one of the bills he must pay at some point in the future.

IV. Conclusion

Mr. W. met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Because he is incarcerated, Mr. W.' modified child support should be calculated at \$50 per month, effective October 1, 2009. But as of August 2010, Mr. W. is working full-time and earning sufficient income so that his child support should be further modified to \$190 per month, effective August 1, 2010, based on his current actual annual income. These calculations should be adopted.

V. Child Support Order

- Mr. W.' child support obligation for D. is modified to \$50 per month, effective October 1, 2009, and further modified to \$190 per month, effective August 1, 2010;
- All other provisions of CSSD's May 21, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 21st day of September, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁶ Mr. W. is obligated to pay 25% of his gross income every month for room and board ($\$20,800 \times .25 = \433.33).

¹⁷ See Attachment A.

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 8th day of October, 2010.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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