

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

In The Matter of:)

K. E. S.)

) OAH No. 10-0337-CSS

) CSSD No. 001131042

DECISION AND ORDER

I. Introduction

The custodian, M. A. A., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. S.'s case on May 28, 2010. The obligee children are T., 14, and Q., 13.

The formal hearing was first convened on August 2, 2010. Both parties appeared by telephone. Ms. A. requested a continuance; Mr. S. consented, so the hearing was held on August 17, 2010.¹ Ms. A. appeared by telephone; Mr. S. did not appear and could not be reached at his contact telephone number, so he did not participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on August 25, 2010.

Based on the record and after due deliberation, CSSD's Modified Administrative Child Support and Medical Support Order is vacated. Mr. S. submitted insufficient evidence to establish that he has had a material change in circumstances such that his child support should be modified. Mr. S.'s child support shall remain at \$542 per month, as set in 2007.

II. Facts

A. Background

Mr. S.'s child support obligation for T. and Q. was set at \$542 per month in February 2007.² On February 10, 2010, Mr. S. requested a modification review and submitted a Social Security printout of his wages for 2007 through 2009.³ On March 5, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order.⁴ On May 28, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. S.'s child support down to \$344 per month, effective April 1, 2010, based on the Alaska

¹ On August 4, 2010, the OAH sent a Notice of Supplemental Hearing to the parties at their addresses on file.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

minimum wage of \$7.75 per hour.⁵ Ms. A. filed an appeal on July 1, 2010, “because he requested modification & then didn’t provide documentation.”⁶

B. Material Facts

At the hearing, Ms. A. testified that Mr. S. had told her during the holiday season in 2007 that he had a workers’ compensation case due to a shoulder/rotator cuff injury at his employer, C. E. Ms. A. stated he told her he had received a small settlement and had refused their offer of retraining at that time. Ms. A. asserts Mr. S. has the ability to work, but is choosing not to. She added that the last child support payment she received was a PFD garnishment in 2008.

CSSD’s representative stated at the hearing that records maintained by the Alaska Department of Labor indicate wages in the amount of \$4,053 were reported being paid to Mr. S. by a company called M. S. during the second quarter of 2010. No other information was available. CSSD was asked to search the worker’s compensation database and submit those results. After the hearing, CSSD filed a Submission to Record that indicates Mr. S. received workers’ compensation disbursements from 2004 through 2007, summarized in the following totals from weekly payments or single payouts:

<u>Date</u>	<u>Type</u>	<u>Amount</u>
June 16, 2004	TTD ⁷	\$ 2,154
November 15, 2005	25% penalty ⁸	\$ 1,515
November 21, 2005	TPD ⁹	\$ 7,085
September 15, 2006	TTD	\$23,695
October 27, 2006	PPI ¹⁰	\$ 3,540
August 31, 2007	41K ¹¹	\$20,599
September 11, 2007	41K	\$36,500

Naturally, these specific amounts cannot be used to determine Mr. S.’s income for child support purposes, but they are evidence of the fact that the obligor had what appears to have been sufficient funds at the end of 2007 – about \$57,099 – with which to support himself for a period of time. Otherwise, there is scant evidence of Mr. S.’s circumstances, including whether he

⁵ Exh. 5at pg. 6.

⁶ Exh. 5.

⁷ TTD= Temporary Total Disability

⁸ 25% penalty= penalty for late payment

⁹ TPD= Temporary Partial Disability

¹⁰ PPI= Permanent Partial Impairment

¹¹ 41K= Reemployment

became employed, and in what capacity and level of income. He submitted a printout from the Social Security Administration that shows he received \$0 earnings in 2007; \$12,223.50 in 2008; and \$0 earnings again in 2009.¹² There are no employment records for Mr. S. in 2009; in 2010, his only recorded income was from M. S. during the second quarter.

III. Discussion

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, 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.¹⁴

A modification is effective beginning the month after the parties are served with notice that a modification has been requested.¹⁵ The person requesting the hearing, in this case, Ms. A., has the burden of proving that CSSD’s Modified Administrative Child Support and Medical Support Order is incorrect.¹⁶

Mr. S.’s child support was previously set at \$542 per month for two children in 2007. In connection with the modification review, CSSD set the modified child support amount at \$344 per month for two children, calculated from annual income of \$16,120.¹⁷ CSSD reached that income amount by imputing to Mr. S. the Alaska minimum wage of \$7.75 per hour times 2,080 hours, the number of hours full-time employees typically work in one year. The modification order does not address why the agency used the minimum wage for Mr. S.’s calculation, but apparently it was because he did not have any reported income in 2009. Also, since the

¹² Exh. 2 at pg. 3. CSSD’s affidavit of earnings reported to the Alaska Department of Labor and Workforce Development for Mr. S. shows \$12,223 from O. E. Co. for 2008, earned during the second and third quarters. This information is consistent with the obligor’s Social Security printout.

¹³ AS 25.27.190(e).

¹⁴ *Id.*

¹⁵ 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.

¹⁶ 15 AAC 05.030(h).

¹⁷ Exh. 4 at pg. 6.

calculation was done on May 28, 2010,¹⁸ CSSD would not have had access to the earnings reported to the Alaska Department of Labor and Workforce Development for Mr. S. for the second quarter of 2010 because the quarter was not complete until the end of June 2010.

Based on the record as a whole, Ms. A. met her burden of proof in this appeal – she proved by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect. Simply put, Mr. S. has not provided enough information to show that he is eligible for modification of his child support order. The law states that a showing of “good cause and material change in circumstances” is necessary to modify child support orders.¹⁹ Mr. S. has not provided enough information to determine what his circumstances are in 2010. The possibility of obtaining testimony from Mr. S., with additional documentation as necessary, was present at the beginning of the hearing. But Mr. S. chose not to participate when the hearing was rescheduled, and thus kept the evidence of his income and current circumstances limited to a Social Security printout. CSSD added more evidence from workers’ compensation records and the Alaska Department of Labor and Workforce Development, but other than Ms. A.’s testimony, there is not enough evidence to make a determination that Mr. S. is entitled to modification of his child support at this time.

Without more evidence, it is impossible to determine Mr. S.’s income and his ability to pay child support. Until such time as he provides such evidence or sufficient testimony to explain his current circumstances, his order to pay \$542 per month should not be modified. His petition for modification review should be denied and the Modified Administrative Child Support and Medical Support Order dated May 28, 2010, should be vacated. Mr. S. 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. A. met her burden of proving by a preponderance of the evidence that CSSD modified Mr. S.’s child support obligation in error. Mr. S. 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. S.’s case should be vacated.

¹⁸ See Exh. 4 at pg. 6, at the top left-hand portion of the page.

¹⁹ AS 25.27.190(e).

V. Child Support Order

- CSSD's May 28, 2010, Modified Administrative Child Support and Medical Support Order is vacated;
- Mr. S.'s child support for T. and Q. remains at \$542 per month;
- All other provisions of the prior order in Mr. S.'s case, the Modified Administrative Child Support and Medical Support Order dated February 23, 2007, remains in full force and effect.

DATED this 14th day of September, 2010.

By: Signed
Kay L. Howard
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 1st 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.]