

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

IN THE MATTER OF:)

M. A. W.)

) OAH No. 10-0344-CSS
) CSSD No. 001093630
)

DECISION AND ORDER

I. Introduction

The obligor, M. A. W., appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on June 23, 2010. The Obligee child is N., who is 12 years of age. The custodian is B. M. H.

The hearing was held on August 9, 2010. Both Mr. W. and Ms. H. appeared by telephone.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on August 18, 2010.

Based on the record and after careful consideration, Mr. W.’s child support is modified to \$244 per month, effective May 1, 2010.

II. Facts

A. Background

Mr. W.’s child support obligation for N. was set at \$340 per month in 2007.² Mr. W. initiated a modification review on April 17, 2010.³ On April 26, 2010, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.⁴ On June 23, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. W.’s ongoing child support to \$253 per month, effective May 1, 2010.⁵ Mr. W. appealed on July 9, 2010, asserting primarily that the effective date of his modification should be August 1, 2009.⁶

¹ Ms. H. attended the hearing but did not wish to present any testimony.
² Exh. 1.
³ Exh. 2.
⁴ Exh. 3.
⁵ Exh. 5.
⁶ Exh. 6.

B. Material Facts

Mr. W. and Ms. H. are the parents of N., who is currently 12 years of age. N. lives with Ms. H. full-time, although Mr. W. had custody from June 2008 through August 2009.

Apparently his child support obligation was suspended while N. lived with him, after which CSSD reinstated the previous amount of \$340 per month when N. returned to Ms. H.'s custody.

Mr. W. currently works at a restaurant named C.'s, where he earns \$9 per hour. Previously he was the membership director at T. F., but his position was eliminated mid-way through January 2010. He earned one-half of his regular \$2,000 per month salary that month and started at C.'s on February 27, 2010. In 2009 Mr. W. also had a part-time job at the B. G., Inc., DBA F. F.r, but he earned only \$390 and is no longer employed there.

Mr. W.'s expected income in 2010 is approximately \$16,735, which consists of \$15,600 from C.'s for ten months, \$135 from overtime at C.'s of about 1½ hours per month, and the \$1,000 he received for his last two weeks of work at T. F.⁷

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁸ 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." 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.

The person requesting the hearing, in this case, Mr. W., has the burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect.⁹ Mr. W. did not appeal the modified support amount. Rather, he asserts that the modification should take effect in August 2009, when his period of custody ended and he began paying support again. He argues that CSSD did not request any financial information from him so his child support was reinstated based on the wrong income figures.

⁷ See CSSD's Post-Hearing Brief at pg. 1.

⁸ AS 25.27.190(e).

⁹ 15 AAC 05.030(h).

This portion of Mr. W.'s appeal must fail. A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹⁰ In this case, Mr. W. petitioned for modification on April 17, 2010, and CSSD issued the notice that a petition had been filed on April 26, 2010.¹¹ CSSD's regulations clearly establish that the date the notice of modification is sent to the parties is the date that determines the effective date of a modification. Thus, his modification is effective as of May 1, 2010. Modifying his child support prior to that date would constitute a retroactive modification, which is specifically prohibited.¹²

After the hearing, CSSD was directed to recalculate Mr. W.'s modified child support amount based on his expected annual income in 2010 of \$16,735. CSSD indicated in its Post-Hearing Brief that the revised amount is \$244 per month.¹³

IV. Conclusion

Mr. W. met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Mr. W.'s child support is now correctly calculated at \$244 per month, and that amount should be adopted, effective May 1, 2010.

V. Child Support Order

- Mr. W. is liable for modified ongoing child support in the amount of \$244 per month, effective May 1, 2010;
- All other provisions of CSSD's June 23, 2010, Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 7th day of September, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹⁰ 15 AAC 125.321(d).

¹¹ Exhs. 2 & 3.

¹² Civil Rule 90.3(h)(2).

¹³ Exh. 10.

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 27th day of September, 2010.

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

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