

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

IN THE MATTER OF:)	
)	OAH No. 10-0347-CSS
L. N. A.)	CSSD No. 001133810
_____)	

DECISION AND ORDER

I. Introduction

L. A. appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD) on June 11, 2010. The custodian of record is K. P. The parties' child is L. A.

A hearing was held on August 11, 2010. Mr. A. appeared in person. CSSD was represented by Child Support Specialist Erinn Brian. The ALJ attempted to reach Ms. P. prior to the beginning of the hearing without success. Mid-way through the hearing, Ms. P. called the Office of Administrative Hearings and provided a different telephone number. She was able to participate by telephone from that point on. The record closed on August 11, 2010.

Based on the record and the testimony at the hearing, Mr. A.'s child support should be set at \$530 per month.

II. Facts

A. Background

The Office of Administrative Hearings issued an order on July 24, 2009, setting Mr. A.'s child support obligation at \$367 per month.¹ Ms. P. requested a modification of this award.² Notice of Petition for Modification of Administrative Support Order was mailed on April 16, 2010.³ A Modified Administrative Child Support and Medical Support Order was issued on June 11, 2010, setting Mr. A.'s support obligation at \$561 per month.⁴ Mr. A. filed a hardship request⁵ and appealed the modified order.⁶

¹ Exhibit 1, page 5. This was a reduction from the prior support obligation of \$731 per month set in January of 2008. Exhibit 1, page 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

⁵ Exhibit 5.

At the hearing, CSSD provided an affidavit showing the amount of wages reported to the Department of Labor for 2006 through the first quarter of 2010.⁷ Mr. A. provided his pay stubs from T. E. from May of 2009 through August of 2010.⁸

At the conclusion of the hearing, CSSD asserted that based on the record and the testimony presented, there has been no material change in circumstances from when the prior Office of Administrative Hearings order was issued and that the request for modification should, therefore, be denied.

B. Material Facts

Mr. A. testified that he previously worked for D. D., but was laid off in the spring of 2009. He found another job with T. E. where he works as an apprentice electrician.⁹ He currently earns \$19.25 per hour in straight time, but earns a higher rate of pay when working on the North Slope or on a job that qualifies for Davis-Bacon wages.¹⁰ Mr. A. testified that his work schedule is uncertain. He only works when T. needs him. He testified that he earns most of his income during the summer construction season. He also stated that he does not expect to have more work on North Slope projects and that he cannot count on working on any Davis-Bacon projects.

Based on Mr. A.'s pay stubs, he earned \$51,074.90 in the 12 months ending on August 1, 2010. His take home pay during this same time period, as reflected on his pay stubs, was \$33,860.52. This equates to an average monthly pay of \$4256 in gross pay and \$2821 per month take home pay.

Mr. A.'s paychecks show, however, that he is earning less this year than he earned last year. As of August 1, 2010, his year to date income was \$21,912.46.¹¹ This equates to an annualized income of \$37,564.

Mr. A. reported monthly expenses, before child support, of \$1779 per month.¹² At the hearing he testified that he also had to purchase his own tools. The amount for tools can vary

6 Exhibit 6.

7 Exhibit 7.

8 Exhibit 8.

9 *See also*, Exhibit 1, page 2 (prior OAH decision and order).

10 Exhibit 8.

11 This time period includes some winter months when Mr. A. earns less money.

12 Exhibit 5, page 3.

widely, but Mr. A. accepted that \$1200 over the course of a year was a reasonable estimate. Thus his monthly expenses would be a little under \$1900 per month. This is consistent with the expenses he reported last year.¹³

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁴ 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."¹⁵ 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.¹⁶ 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.¹⁷ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁸

When calculating a child support obligation, CSSD must use "the best information available" to determine a parent's income for the time in which child support will be paid.¹⁹ The best available information includes current income as shown on pay stubs and actual income from the immediately prior calendar year.²⁰ In this case, the child support modification will become effective on May 1, 2010. The best available information as to what he will earn on an ongoing basis is his year to date earnings since January 1, 2010. As stated above, this equates to an annualized income of \$37,564 per year. If, as Mr. A. expects, his income continues to drop because he is not obtaining full time employment or as many hours on Davis-Bacon jobs, he may seek an additional modification.

¹³ Exhibit 1, page 2.

¹⁴ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁵ AS 25.27.190(e).

¹⁶ This is only a presumption. In appropriate situations, modifications can be made when the change is less than 15%.

¹⁷ 15 AAC 125.321(d).

¹⁸ 15 AAC 05.030(h).

¹⁹ 15 AAC 125.050(a).

²⁰ 15 AAC 125.050(c).

Mr. A. also sought a hardship exemption, which requires a showing by clear and convincing evidence that it would be manifestly unjust for him to pay child support at the rate calculated from his estimated annual income.²¹ Mr. A. has earned significant wages in each of the past four calendar years. The prior child support order from the Office of Administrative Hearings assumed he would be earning approximately \$24,000 per year when in fact the Department of Labor reported he earned over \$33,000 in just the last six months of 2009.²² Plus, his reported expenses are not particularly high.

Mr. A. did testify credibly that he is having trouble paying his monthly expenses at this time. There may be a discrepancy between what he thinks he is spending each month and what he is actually spending. He may benefit from credit counseling or other assistance in managing his household budget. Based on his reported income and expenses, however, he should be able to pay his monthly expenses and his child support obligation from his annual income.²³ Thus, Mr. A. did not show clear and convincing evidence that having to pay the calculated child support amount would be manifestly unjust, so he is not entitled to a hardship exemption.

IV. Conclusion

There has been a material change in circumstances since the prior child support order was issued by the Office of Administrative Hearings. Mr. A. has in fact earned more than the amount assumed by that order. His child support should be based on his projected annual income of \$37,564. This results in a child support award of \$530 per month for one child.²⁴

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²¹ 15 AAC 125.075(a).

²² Exhibit 7.

²³ Mr. A. testified that he may be looking for a second job. Depending on the reasons why the second job is taken, that income might be excluded from his child support calculation. Civil Rule 90.3, Commentary VI.B.9.

²⁴ Attachment A.

V. Child Support Order

- Mr. A. is liable for modified ongoing child support in the amount of \$530 per month, effective May 1, 2010.
- All other provisions of the June 11, 2010 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 13th day of August, 2010.

By: Signed
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 30th day of August, 2010.

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

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