

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

IN THE MATTER OF:)	
)	OAH No. 10-0383-CSS
W. W. H.)	CSSD No. 001119056
_____)	

DECISION AND ORDER

I. Introduction

The obligor, W. W. H., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (“CSSD”) issued in his case on May 22, 2010. The obligee children are F., 10, and S., 8. The custodial parent is J. D. W.

The formal hearing was held on August 23, 2010. Both Mr. H. and Ms. W. participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 29, 2010.

Based on the record and after careful consideration, Mr. H.’s child support is modified to \$736 per month for two children (\$545 per month for one child), effective April 1, 2010, and ongoing.

II. Facts

A. History

Mr. H.’s child support obligation for F. and S. was set at \$50 per month in 2005.¹ On March 15, 2010, Ms. W. filed a petition for modification.² On March 18, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ On May 22, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. H.’s support at \$557 per month for two children, effective April 1, 2010.⁴ Mr. H. appealed on July 6, 2010, asserting he did not receive a PFD.⁵

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.

B. Material Facts

Mr. H.'s primary place of employment is B & G M.⁶ He has worked there since the second quarter of 2008. He testified that toward the end of 2009, he obtained part-time work for other employers so he could finish paying off his child support arrears. Specifically, Mr. H. worked for T. E. during the winter of 2009 doing snow removal at P. H.. He has not worked for T. since the first quarter of 2010, and he does not intend to return to that job for the 2010 winter season.⁷ Mr. H.'s other part time job is for C. W., where he does cleaning between 3-4 hours per week and earns \$10 per hour. He received \$85 from C. W. in the first quarter of 2010, but no income was reported from that job for the second quarter.⁸

Mr. H. has two older children, D., who is now 18 years of age, and a son who is 16. He pays child support of \$50 per week (approximately \$216 per month) to the state of New Jersey for arrears in the case of his prior children.⁹

III. Discussion

Mr. H. stated he filed the appeal primarily because CSSD did not use the correct income figures in the calculation and CSSD did not grant him a deduction for paying support for prior children. Also, he asserts that he has been disqualified from the permanent fund dividend because of previous incarceration.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁰ 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. Mr. H.'s child support previously was set at \$50 per month, so the 15% minimum increase has been met and his support order may be modified. 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 April 1, 2010.¹¹

⁶ Exh. 7 at pg. 1.

⁷ Testimony of Mr. H.

⁸ Exh. 7 at pg. 1.

⁹ Exh. 5 at pg. 3.

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 125.321(d). In this case, the notice was issued on March 18, 2010. Exh. 3.

As the person who filed the appeal in this case, Mr. H. has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.¹²

Civil Rule 90.3 provides for deductions from income for parents who pay support for children from prior relationships. If the parent pays support for a prior child, that amount is deducted from the parent's income in the child support calculation for the younger child at issue. This provision of the rule requires that the child support payments must be ordered by a court or administrative agency and must actually be paid.¹³

CSSD initially calculated Mr. H.'s modified child support at \$557 per month for two children, based on the previous four quarters of income as reported to the Alaska Department of Labor. This calculation should be adjusted because his quarterly income is higher than it was in 2009 due to a \$2 per hour raise Mr. H. recently received.¹⁴

At the end of the hearing, CSSD was asked to prepare a revised calculation without using Mr. H.'s income from his part time job. The reason is that he took on extra part-time work in order to retire his child support arrears and no longer has that employment. CSSD subsequently filed a proposed calculation of \$736 per month for two children,¹⁵ based on the division's estimate that Mr. H.'s total actual income for 2010 would be about \$38,764.44.¹⁶ CSSD did not include a PFD in the obligor's income, nor did CSSD give Mr. H. a deduction for paying support for his prior children. The information CSSD received from the other state indicates that all of that support obligation is being paid for arrears for past due amounts – the obligor does not pay ongoing child support for his prior children, nor is it possible to know what period of time the arrears are being paid for.

IV. Conclusion

Mr. H. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Unfortunately, the revision increased his support obligation because Mr.

¹² 15 AAC 05.030(h).

¹³ Civil Rule 90.3(a)(1)(C).

¹⁴ See Notice of Filing Proposed Calculation at pg. 1; Exh. 8.

¹⁵ The one-child amount is \$545 per month. Exh. 9.

¹⁶ Exh. 9.

H.'s income has increased recently. Mr. H.'s child support is now correctly calculated at \$736 per month for two children or \$545 per month for one child. These figures should be adopted.

V. Child Support Order

- Mr. H. is liable for modified ongoing child support for F. and S. in the amount of \$736 per month for two children (\$545 per month for one child), effective April 1, 2010, and ongoing;
- All other provisions of CSSD's May 22, 2010 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 20th day of October, 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 8th day of November, 2010.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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