

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

IN THE MATTER OF:)	
)	OAH No. 10-0431-CSS
A. J. S.)	CSSD No. 001115767
_____)	

DECISION AND ORDER

I. Introduction

The obligor, A. J. S., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on July 30, 2010. The obligee child is J., 8. The other parent is J. F. R.

The formal hearing was held on September 14, 2010. Mr. S. participated by telephone; Ms. R. did not participate in the hearing.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on September 21, 2010.

Based on the record and after careful consideration, Mr. S.'s child support is modified to \$568 per month for one child, effective June 1, 2010, and ongoing.

II. Facts

A. History

Mr. S.'s child support obligation for J. was set at \$50 per month in June 2008.² Ms. R. requested a modification review on May 11, 2010.³ On May 24, 2010, CSSD issued a notice of petition for modification review and directed Mr. S. to provide income information.⁴ He did not respond.⁵ On July 30, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. S.'s child support to \$630 per month, effective June 1, 2010.⁶

¹ Two calls were placed to Ms. R.'s telephone numbers on record, but she could not be reached. A message was left on her outgoing voice mail, but she has not contacted the OAH.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Pre-hearing brief at pg. 1.

⁶ Exh. 4.

Mr. S. appealed on August 20, 2010, asserting his income is only half as much as CSSD estimated.⁷

B. Material Facts

Mr. S. previously worked for several years as a line cook at a local restaurant, where he earned \$21,428.93 in 2007.⁸ He was incarcerated for 14 months from February 2008 through April 2009, during which time he accrued child support arrears and other bills. When he was released Mr. S. returned to his position at the restaurant. He also obtained a second job at A. S., Inc. (ASI), a company that provides meals for crew members on cargo flights originating out of Anchorage. After catching up on child support and paying his other bills, Mr. S. decided that his second job at ASI actually was better for him because the hourly wage was higher and he was also able to work overtime. He subsequently left the restaurant and since March 2010 has worked solely at ASI, where he receives \$14 per hour and \$21 per hour for about 20 hours of overtime per pay period.⁹ Due to his incarceration, Mr. S. was not eligible for the 2009 PFD and did not apply for the 2010 dividend.

III. Discussion

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. A modification is effective the first day of the month following CSSD’s notice to the parties that a modification has been requested.¹¹ As the person who filed the appeal in this case, Mr. S. has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was issued in error.¹²

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." Prior to the hearing CSSD submitted a draft

⁷ Exh. 7.

⁸ Testimony of Mr. S.; Exh. 6.

⁹ See Exh. 5 at pg. 6.

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 125.321(d). The notice in this case was issued on May 24, 2010, so the modification is effective as of June 1, 2010.

¹² 15 AAC 05.030(h).

child support amount of \$582.¹³ This was calculated from income totaling \$20,765.61 that was reported by his employers to the Alaska Department of Labor for the first two quarters of 2010.¹⁴ CSSD doubled that amount to obtain estimated income for the year of \$41,531.22.¹⁵ However, since Mr. S. has been working solely at ASI since March 2010, his income for the remainder of the year is best estimated by multiplying his second quarter income of \$10,562.93 times three, to represent his second through fourth quarter income, then adding the result to his first quarter income.

CSSD prepared the calculation as directed by the administrative law judge. Mr. S.'s total estimated income for 2010 is thus \$41,891.47, which results in a child support amount of \$568 per month.¹⁶

IV. Conclusion

Mr. S. 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). His income has been adjusted; the resulting child support amount is now correctly calculated at \$568 per month, which should be adopted.

V. Child Support Order

- Mr. S. is liable for modified ongoing child support for J. in the amount of \$568 per month, effective June 1, 2010, and ongoing;
- All other provisions of CSSD's July 30, 2010 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 8th day of October, 2010.

By: Signed
Kay L. Howard
Administrative Law Judge

¹³ Exh. 7.

¹⁴ Exh. 6.

¹⁵ Exh. 7.

¹⁶ This unnumbered exhibit was received attached to CSSD's Submission to Record on September 14, 2010, and has been marked as Exhibit 8.

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 25th 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.]