

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

IN THE MATTER OF: )

C. M. )

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) OAH No. 10-0442-CSS  
) CSSD No. 001107005  
)

**DECISION AND ORDER**

**I. Introduction**

C. M., the obligor parent, appealed an administrative decision issued by the Child Support Services Division (CSSD) modifying his ongoing child support obligation. K. L. is the custodian of record, and D. L. is the obligee child.

A hearing was held on September 27, 2010. Child Support Specialist Erinn Brian appeared in person on behalf of CSSD. Mr. M. also appeared in person. Ms. L. was called to participate in the hearing, but was not available at the phone number in the record. A message was left and she did call in after the close of the hearing. The hearing was re-opened to give Ms. L. an opportunity to testify and to cross-examine Mr. M.

Based on the record and the testimony at the hearing, Mr. M.'s ongoing support obligation should be set at \$280 per month.

**II. Facts**

*A. Background*

CSSD issued an Administrative Child Support and Medical Support Order setting Mr. M.'s child support at \$50 per month on October 22, 2001.<sup>1</sup> Ms. L. submitted a Request for Modification of a Child Support Order on June 2, 2010.<sup>2</sup> A Notice of Petition for Modification of Administrative Support Order was mailed on June 14, 2010.<sup>3</sup> A Modified Administrative Child Support and Medical Support Order was issued on August 24, 2010. This modified order set Mr. M.'s child support obligation at \$343 per month.<sup>4</sup> Mr. M. appealed, stating that he has another child in his custody that he is supporting and that he has made direct payments to Ms.

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 3.  
<sup>4</sup> Exhibit 4.

L.<sup>5</sup> At the hearing, Mr. M. also testified that D. had been in his custody for the month of June, 2010.

Mr. M. was also concerned that CSSD was garnishing his Permanent Fund Dividend (PFD) check and his tax refund. He was under the impression that this was for the month of June, which is when he had custody of D.

*B. Material Facts*<sup>6</sup>

Mr. M.'s income was approximately \$23,586.75, which is the amount shown in CSSD's child support calculation.<sup>7</sup> Mr. M. has another biological child in his home, and he is the only parent supporting that child.

From June 3 through July 10, Mr. M. was the custodial parent for D. because Ms. L. was moving to Texas, and Mr. M. took care of D. until she was established in Texas. Finally, Mr. M. has made direct payments to Ms. L. to support D.

Ms. L. agreed that Mr. M. did take care of D. for most of June, and that he had given her \$100 in August to pay for school clothes, which she accepted as credit towards child support.

**III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>8</sup> 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."<sup>9</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established and the order may be modified. 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.<sup>10</sup> Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.<sup>11</sup>

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<sup>5</sup> Exhibit 5.

<sup>6</sup> These findings are based on Mr. M.'s testimony unless otherwise noted.

<sup>7</sup> Exhibit 4, page 6.

<sup>8</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>9</sup> AS 25.27.190(e).

<sup>10</sup> 15 AAC 125.321(d). In this case, the notice was issued on June 14, 2010, so the modification is effective as of July 1, 2010. See Exhibit 3.

<sup>11</sup> 15 AAC 05.030(h).

CSSD's original calculation was incorrect because it did not take into account the older child in Mr. M.'s care. Mr. M. is entitled to a deduction for supporting this other child.<sup>12</sup> CSSD submitted a new calculation that includes this deduction and the result shows Mr. M.'s correct child support obligation is \$280 per month for one child.<sup>13</sup>

Ms. L. also agreed that Mr. M. should not owe child support for the month of June, when D. was in his custody. However, that occurred before the effective date of this modification, and so CSSD will need to make that adjustment administratively. Ms. L. also agreed that Mr. M. should get credit for the \$100 he paid to purchase school clothes. Mr. M. is entitled to this credit.<sup>14</sup> Finally, whether CSSD may properly garnish Mr. M.'s PFD or tax return is beyond the scope of this order and the administrative law judge's jurisdiction.<sup>15</sup> If he has missed any payments during the nine years that a support order has been in effect, then CSSD may be properly trying to collect the total of those missed payments. In any event, a correction to the total being collected may not be addressed here.

#### **IV. Conclusion**

Mr. M. met his burden of proving that the Modified Administrative Child Support and Medical Support Order was incorrect. Based on the information submitted at the hearing, Mr. M.'s ongoing child support obligation should be set at \$280 per month for one child, effective July 1, 2010.

#### **V. Child Support Order**

- Mr. M. is liable for modified ongoing child support in the amount of \$280 per month for one child, effective July 1, 2010;
- Mr. M. is entitled to a credit for direct payments made to the custodian in the amount of \$100 in August, 2010.

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<sup>12</sup> Civil Rule 90.3(a)(1)(D).

<sup>13</sup> Exhibit 7.

<sup>14</sup> 15 AAC 125.465. Since the custodian agreed that Mr. M. paid \$100 in August, 2010, after the effective date of the modification, this decision will grant him the credit. However, Mr. M. should read this regulation or discuss with his case worker the limitations on receiving this type of credit in the future.

<sup>15</sup> See AS 25.27.180(a)(1).

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 24, 2010 remain in full force and effect.

DATED this 5<sup>th</sup> day of October, 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 25<sup>th</sup> day of October, 2010.

By: Signed  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

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