

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

In The Matter of:)	
)	OAH No. 10-0447-CSS
J. A S., JR.)	CSSD No. 001094655
<hr style="border: 0.5px solid black;"/>		
)	

DECISION AND ORDER

I. Introduction

The custodian, K. L. W., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. S.'s case on August 12, 2010. The obligee child is J., 16 years old.

The formal hearing was held on September 27, 2010. Ms. W. did not participate;¹ Mr. S. appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded; the record closed on October 7, 2010.

Based on the record and after due deliberation, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed.

II. Facts

A. Procedural History

Mr. S.'s child support obligation for J. was set at \$346 per month in March 2009.² On May 24, 2010, Mr. S. requested a modification review.³ On June 11, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.⁴ Mr. S. provided financial information.⁵ On August 12, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order⁶ that lowered Mr. S.'s child support to \$197 per

¹ The custodian signed for her certified notice of hearing but did not appear in person and could not be reached for the hearing. A telephone call placed to her contact number before the hearing was not answered. The undersigned left a message for Ms. W. to call the OAH, but as of the date of this decision, she has not called the office.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Exh. 5.

month, effective July 1, 2010. Ms. W. filed an appeal on September 1, 2010, asserting essentially that she could not afford the decrease in Mr. S.'s child support.⁷

B. Material Facts

Mr. S. lives in Arizona. He is employed by B. H. and C., a sheet metal company, where he installs furnaces and boilers. Based on his earnings from this employer in 2009, his child support was previously set at \$346 per month.

Mr. S. testified that on April 3, 2010, he had an accident on a dirt bike and severely injured both of his knees. His right knee was shattered and required reconstructive surgery. After the surgery on his right knee, he was in leg braces and a wheelchair for several months. He had a second surgery on September 13, 2010 to fix the ACL injury in his left knee. Although he is no longer in the wheelchair, he is currently using crutches and has no idea when he will be able to return to work.

Mr. S. has not been employed since the date of his accident, although he did go in for light duty work for approximately 2 weeks prior to his second surgery. Other than that, his only income since his accident has been a \$92 per week disability payment from his union.

Mr. S. lives with his girlfriend, L. G., who is employed full time and brings home approximately \$1600 per month. Ms. Garcia is currently responsible for all of the bills incurred in their household. Fortunately, Mr. S. is covered by her insurance, but they are still required to cover the 20% co-pay for all of his medical care.

Ms. Garcia spoke with their landlord, who reduced their rent from \$700 to \$600 per month after Mr. S. was injured. In addition, their expenses total \$600 per month for food; \$91 for natural gas; \$70 for water services; \$17 for trash pickup; \$66 for electricity; \$80 for telephone; \$48 for cable; and \$132 per month for Internet and cell phone usage. They also pay \$387 for the payment on a 2005 Acura; \$100 for gasoline; \$150 for vehicle maintenance; \$290 for vehicle insurance; \$500 for health insurance (although that may be an annual amount); \$100 for entertainment; \$200 for personal care items; \$150 for alcohol or tobacco; and \$50 for the regular payments on two credit cards. They have medical expenses pertaining to Mr. S.'s motorcycle injury in April 2010 of \$1175 for their portion of the copayment; \$176 for medicine;

⁷ Exh. 6.

and \$120 for medical equipment. They owe a remaining balance of \$2537.79 on total medical bills of \$5,460.09.⁸

Little of Ms. W.’ circumstances is known because she did not participate in the hearing. What can be gleaned from her written appeal and attached documents – copies of some bills – is that her financial situation is also precarious.⁹ She is a single mother and the obligee child J. is in high school. Apparently, J. broke his left thumb on the last day of school in spring 2010, then broke his right wrist six weeks before she filed this appeal. On top of that, Ms. W. was sick and forced to miss almost a full week of work, which is difficult because some of her earnings is derived from tips. Ms. W. also indicated that J. has had to have braces, which cost \$2000.

III. Discussion

Ms. W. filed an appeal and requested a formal hearing, but she did not participate in the hearing. The only evidence she presented was her appeal statement and copies of bills. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the requesting party fails to appear.

CSSD calculated Mr. S.’s modified child support at \$197 per month, based on the division’s assessment that he is capable of earning at least the minimum wage for 35 hours per week. The resulting income figure, \$13,195, results in a child support amount of \$197 per month.¹⁰ Ms. W. appealed this amount, claiming she cannot afford the reduction.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹¹ 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 new amount in Mr. S.’s case meets the minimum 15% difference required to permit modification of his child support order.

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹²

Ms. W. has not met her burden of proving that CSSD’s modification of Mr. S.’s child support order is incorrect. Although Ms. W.’ financial circumstances result in no small amount

⁸ Exh. 7.

⁹ Exh. 6.

¹⁰ Exh. 5 at pg. 6.

¹¹ AS 25.27.190(e).

of strain in her life, Mr. S. is in a very similar situation as a result of his motorcycle accident and resulting inability to work. However, Mr. S.'s disability is seen as temporary and should not result in a reduction of his child support obligation to \$50 per month, the minimum amount allowed under Alaska law.¹³ It appears to be a coincidence, but the child support amount CSSD calculated is exactly midway between Mr. S.'s prior support amount of \$346 per month and the minimum amount allowed by Civil Rule 90.3, \$50 per month. Thus, adopting CSSD's order will result in Ms. W. and Mr. S. equally bearing the burden of his temporary inability to work. Mr. S. should initiate a subsequent modification to return his child support to the correct amount as soon as he begins working again.

IV. Conclusion

Ms. W. did not meet her 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 15AAC 05.030(h). Both parties in this case have a significant amount of financial stress in their lives at this time. CSSD's calculation of \$197 per month represents a balance between Mr. S.'s temporary disability and Ms. W.'s current circumstances. Therefore, CSSD's order should be affirmed.

V. Child Support Order

- CSSD's August 12, 2010, Modified Administrative Child Support and Medical Support Order is affirmed – Mr. S.'s ongoing support is modified to \$197 per month, effective July 1, 2010;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 12, 2010, remain in full force and effect.

DATED this 28th day of October, 2010.

By: *Signed* _____
Kay L. Howard
Administrative Law Judge

¹² 15 AAC 125.321(d).
¹³ See Civil Rule 90.3(c).

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 14th day of November, 2010.

By: Signed
Signature
Christopher Kennedy
Name
Deputy Chief ALJ
Title

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