

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

IN THE MATTER OF:)	
)	OAH No. 10-0504-CSS
S. D. H.)	CSSD No. 001119236
_____)	

DECISION AND ORDER

I. Introduction

The obligor, S. D. H., appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 16, 2010. The obligee child is K., 10 years old. The custodian is S. L. Z.

The formal hearing was held on October 26, 2010. Mr. H. participated by telephone; Ms. Z. appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded. The record closed on November 12, 2010.

Based on the record and after careful consideration, Mr. H.'s child support is modified to \$1,153 per month for one child, effective August 1, 2010, and ongoing.

II. Facts

A. History

Mr. H.'s child support obligation for K. was set at \$440 per month in 2004.¹ Ms. Z. filed a petition for modification on June 28, 2010.² On July 7, 2010, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. H. did not provide income information.⁴ On September 16, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. H.'s child support to \$1,342 per month for one child, effective August 1, 2010.⁵ He appealed on September 28, 2010.⁶

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Pre-Hearing Brief at pg. 1.
5 Exh. 4.
6 Exh. 5.

B. Material Facts

Mr. H. and Ms. Z. are the parents of K., who is 10 years of age. K. lives with Ms. Z. Mr. H.'s child support has been \$440 per month since 2004.

Mr. H. has worked for V. A. for many years. He is currently working a 2 weeks-on/2 weeks-off schedule. In 2008, his annual income totaled approximately \$108,246.64; in 2009, it was \$113,260.53.⁷ In the first two quarters of 2010, Mr. H. earned \$54,882.66,⁸ but he claimed at the hearing that his income for the second half of the year will be lower than that. Mr. H. explained that he was a foreman on a temporary basis from December 2009 through mid-July 2010 and during that time earned \$39 per hour. He said when a new foreman was hired he returned to his previous position as a "lead" earning \$37.75 per hour. Mr. H. pays 5% of his income into a retirement account but he is not in a union and does not have to pay those dues.

Mr. H. has no other children in the home other than K. when she visits him. However, he does have two children who are older than K. for whom he pays support of \$443 per month, pursuant to a court order.⁹

III. Discussion

Mr. H. appealed CSSD's calculation of his modified child support obligation. He has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.¹⁰ 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 August 1, 2010.¹¹

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹² 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.

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

7 Exh. 6.

8 *Id.*

9 Exh. 7 at pg. 10.

10 15 AAC 05.030(h).

11 15 AAC 125.321(d). In this case, the notice was issued on July 7, 2010. Exh. 3.

12 AS 25.27.190(e).

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

For the modification review, CSSD calculated Mr. H.'s modified child support based on the income reported to him by the Alaska Department of Labor and Workforce Development. The division doubled his reported earnings of \$54,882.56 from the first two quarters of 2010,¹⁴ which resulted in total income from employment of \$109,765.32.¹⁵ CSSD added the PFD to that income amount and calculated child support at \$1,342 per month.¹⁶

Mr. H. testified that his hourly wage has gone down for the second half of 2010 because he is no longer a temporary foreman, so as a result his actual income is lower than the figure CSSD used to calculate his child support. Mr. H. was asked to provide his most recent paystub, which he submitted after the hearing.¹⁷ CSSD then reviewed his submission, which indicates that his year to date earnings as of October 26, 2010, were \$95,364.99.¹⁸ CSSD used that figure to estimate Mr. H.'s total annual income at \$108,988.56 for 2010.¹⁹ With the addition of the PFD amount of \$1,281, Mr. H.'s estimated total gross income for 2010 becomes \$110,269.56.²⁰ Mandatory deductions from that income include taxes and Social Security, retirement, unemployment insurance and the \$443 per month that Mr. H. pays in support for two older children. Using these figures, CSSD calculated Mr. H.'s modified child support at \$1,153 per month.²¹

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). That order, which modified Mr. H.'s child support to \$1,342 per month, should be adjusted to \$1,153 per month based on an extrapolation of his year-to-date income

13 Civil Rule 90.3(a)(1)(C).

14 See Exh. 6.

15 Exh. 4 at pg. 6.

16 *Id.* This calculation does not include a deduction for prior child support.

17 Exh. 9.

18 Exh. 9 at pg. 2.

19 Exh. 10.

20 *Id.*

21 *Id.*

received as of October 26th. The primary change in the calculation comes from the retirement deduction and the support that Mr. H. pays for his prior children. CSSD's post-hearing calculation should be adopted.

V. Child Support Order

- Mr. H. is liable for modified ongoing child support for K. in the amount of \$1,153 per month, effective August 1, 2010, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated September 16, 2010, remain in full force and effect.

DATED this 2nd day of December, 2010.

By: Signed

Kay L. H.
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 21st day of December, 2010.

By: Signed

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

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