

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

IN THE MATTER OF:)

M. A. K.)

) OAH No. 10-0537-CSS

) CSSD No. 001142428

DECISION AND ORDER

I. Introduction

The obligor, M. A. K., appealed a Notice of Denial of Modification Review that the Child Support Services Division (“CSSD”) issued in his case on September 28, 2010. The Obligee child is R., who is currently twelve years of age.

The hearing was held on November 10, 2010. Mr. K. participated by telephone; the custodian, M. J. B., did not participate.¹ Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded and the record closed on November 10, 2010.

Based on the record and after due deliberation, Mr. K.’s child support is modified to \$237 per month, effective September 1, 2010.

II. Facts

Mr. K.’s child support obligation for R. was set at \$429 per month in 2006.² He requested a modification review on August 19, 2010.³ On August 25, 2010, CSSD notified the parties that a modification review had been requested.⁴ Mr. K. did not provide the requested financial information. Accordingly, on September 28, 2010, CSSD issued a Notice of Denial of Modification Review for the reason that Mr. K. did not provide all of the information necessary.⁵

Mr. K. timely appealed and explained that he was “waiting on proof of income from the Alaska unemployment office.”⁶ He provided the requested financial documents November 2,

¹ The file contained two phone numbers for Ms. B. Both numbers were called prior to going on the record, but Ms. B. could not be reached.

² Exh. 1.

³ Exh. 2.

⁴ Exh. 3.

⁵ Exh. 4.

⁶ Exh. 5.

2010.⁷ These documents include a 2009 Federal Income Tax and an email from Lori Kibby, Unemployment Insurance Specialist with the Alaska Department of Labor and Workforce Development dated October 6, 2010, indicating that Mr. K. has been receiving weekly unemployment benefit in the amount of \$310.⁸

Mr. K. left Alaska in 2009 for Las Vegas. He testified that upon his arrival in Las Vegas he quickly found employment in his line of work, automobile technician. He was laid off a short while later due to lack of work. Mr. K. described his continuing efforts to obtain employment over the past year and has a lead on a job that is expected to open up early 2011.⁹ CSSD questioned Mr. K. on his education, training and current living arrangement (he splits his rent with a roommate and has minimal monthly expenses). At the hearing's conclusion CSSD's changed its earlier position and offered that Mr. K.'s child support should be modified based on his current annual income of \$16,120.¹⁰

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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."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. A modification is effective the first day of the month following CSSD's notice to the parties that a modification has been requested.¹³ If the person who requests a modification review does not provide evidence sufficient to review the underlying child support order, CSSD may decline the review.¹⁴

⁷ Exh. 6.

⁸ Exh. 6.

⁹ K. Testimony.

¹⁰ $\$310 \times 52 = \$16,120$.

¹¹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹² AS 25.27.190(e).

¹³ 15 AAC 125.321(d). In this case, the notice was issued on August 25, 2010, thus making the modification effective on September 1, 2010. See Exh. 3.

¹⁴ 15 AAC 125.316(e).

In this case, CSSD initially denied Mr. K.'s request for a modification review because he did not document his income. However, he has subsequently established that he receives unemployment payments of \$310 per week.¹⁵ This weekly amount equals \$16,120 per year.¹⁶ Mr. K. is no longer an Alaska resident so he is not eligible for the PFD. A calculation using his current annual income yields a child support figure of \$237 per month.¹⁷ This is a 44.7% decrease from his prior child support amount of \$429 per month.¹⁸ Based on his annual income, Mr. K. has established a material change in circumstance and the new monthly child support amount of \$237 for one child should be adopted. CSSD concurred.

Mr. K. is reminded that he is to petition for modification once his present situation changes. Regardless, CSSD should revisit Mr. K.'s income and child support obligation in 12 months.

IV. Conclusion

Mr. K. met his burden of proving by a preponderance of the evidence that CSSD's Notice of Denial of Modification Review was incorrect. His child support should be modified to \$237 per month, effective September 1, 2010.

V. Child Support Order

- CSSD's September 28, 2010 Notice of Denial of Modification Review is vacated;
- Mr. K. is liable for modified ongoing child support for R. in the amount of \$237 per month, effective September 1, 2010; and
- All other provisions of the prior order in effect in Mr. K.'s case, the Amended Administrative Child and Medical Support Order dated August 11, 2006 remain in full force and effect.

DATED this 15th day of November, 2010.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

¹⁵ Exh. 6 at pg. 3.

¹⁶ $\$310 \times 52 = \$16,120$.

¹⁷ Attachment A.

¹⁸ $\$429 \times 44.7\% = \237 .

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 3rd day of December, 2010.

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

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