

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

IN THE MATTER OF:)

K. M.)

) OAH No. 11-0019-CSS
) CSSD No. 001095975
)

DECISION AND ORDER

I. Introduction and Procedural Background

This case involves the Obligor K. M.'s appeal of the Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in this matter on December 16, 2010.¹ This order increased Mr. M.'s monthly child support obligation from \$881 per month for two children set in October 2006 using a shared custody calculation to \$1,273 per month for one child, K., using a primary custody calculation, effective November 2010. The custodian of record for K. is K. R. The parties have another child S. who is presently residing with her father and who will graduate from high school in May 2011. Mr. M. appealed asserting that his income was incorrect.

After Mr. M. appealed a hearing was held February 2, 2011. At the start of the hearing the Mr. M. was called at the phone numbers he provided. One number was answered by voice mail and a number for Mr. M. to call back on was provided. The other number rang, but was never answered. The file does show the certified mail containing the Notice of Hearing was returned undelivered. The Notice of Assignment sent by first class mail was has not been returned as either unclaimed or undeliverable. The file indicates that Mr. M. did call the Office of Administrative Hearings after the hearing had concluded and was informed of his options to request a new hearing at that time. Ms. R. participated by phone Child Support Specialist Erinn Brian represented CSSD. Following the hearing the record was left open until February 12, 2011 to provide Mr. M. with an opportunity to show reasonable cause for his failure to participate.² The record closed without further input from Mr. M.

¹ Exhibit 6.

² "If a person requests a hearing and fails to appear at the hearing, the hearing officer may issue a decision without taking evidence from that person, unless the person within 10 days after the date scheduled for hearing, shows reasonable cause for failure to appear." 15 AAC 05.030(j).

II. Facts

In October 2006 child support was established based upon shared custody. Mr. M. was ordered to pay \$881 for two children effective June 1, 2006.³ Since then, Ms. R. has moved to Washington state with her husband and the parties' minor child, K. The parties' other child, S., age 18, remained in Alaska with Mr. M. She attends school full-time and will graduate in May 2011.⁴ Because of this new arrangement, Ms. R. requested modification.⁵ A Notice of Petition for Modification of Administrative Support Order was issued on October 13, 2010.⁶ As instructed in the Notice, Ms. R. provided her income information. Mr. M. did not provide any information. After extrapolating Mr. M.'s year-to-date earnings, CSSD calculated child support and issued a Modified Administrative Child Support and Medical Support Order on December 16, 2010, based upon Ms. R. having primary custody of K. Mr. M. was ordered to pay \$1647 per month for K. effective November 2010. Mr. M. appealed and provided the previously requested financial information. He challenged the adjusted income figured used by CSSD to calculate child support.

III. Discussion

Mr. M., as the individual appealing the December 16, 2010 Modified Administrative Child Support and Medical Support Order, has the burden of proving that it is in error.⁷ The evidence provided by Mr. M. in support of his appeal is his unsworn request for appeal of modification and attachments thereto. The crux of Mr. M.'s appeal was that he challenged the deductions used by CSSD.

When calculating child support under Civil Rule 90.3, the rule instructs that parent's adjusted gross income is calculated by taking their total income from all sources minus mandatory deductions.⁸ Rarely is the adjusted gross income for purposes of child support the same as a person's net pay on their pay check. The commentary reminds us that a "very limited

³ Exhibit 1.

⁴ Exhibit 2; Testimony of R.

⁵ Exhibit 3.

⁶ Exhibit 4.

⁷ "At the hearing, the person requesting the hearing has the burden of proving that the action by the department to which that person objects is incorrect." 15 AAC 05.030(h).

⁸ Ak. R. Civ. P. 90.3(a).

number of expenses may be deducted from income.”⁹ Child support determinations calculated under Civil Rule 90.3 from an obligor’s actual income figures are presumed to be correct.

Ms. R. testified at hearing that she is not currently working and is looking for employment. She believes she will find part-time employment earning \$15 per hour. Post hearing CSSD provided revised calculations based upon Mr. M.’s earning \$138,490 in 2010 reported by his employer to the Alaska Department of Labor and Workforce Development.¹⁰ CSSD imputed income to Ms. R. at \$15 per hour x 1040 hours per year which results in an annual gross income of \$15,600.¹¹ Using these income figures CSSD calculated child support under 90.3. It calculated child support using a divided custody calculation for two children from November 1, 2010 through May 31, 2010.¹² The divided custody calculation resulted in Mr. M.’s monthly child support obligation to be \$1,257.04 per month from November 1, 2010 through May 31, 2010.¹³ From June 1, 2010, CSSD performed a primary custody calculation for K.¹⁴ This calculation resulted in a monthly child support obligation for one child in the amount of \$1,506 per month from June 2010 and ongoing.¹⁵ These amounts based on Mr. M.’s actual income for 2010 are less than what CSSD originally calculated and should be adopted.

IV. Conclusion

The Modified Administrative Child Support and Medical Support Order issued December 16, 2010 was calculated using a partial years income and resulted in a primary custody child support obligation of \$1,647 per month. Child support calculated using Mr. M.’s annual income for 2010 results in a primary custody support obligation of \$1,506 per month. Child support calculated using actual income amounts are presumed to be correct. Therefore, the December 16, 2010 Modified Administrative Child Support and Medical Support Order should be amended to accurately reflect Mr. M.’s child support obligation.

⁹ Ak. R. Civ. P. 90.3, Commentary III D.

¹⁰ Exhibit 9.

¹¹ Exhibit 10.

¹² Exhibit 10 at 3.

¹³ *Id.*

¹⁴ Exhibit 10 at 2.

¹⁵ *Id.*

V. Child Support Order

1. Mr. M. is liable for divided custody monthly child support for K. in the amount of \$1,257.04 per month from November 2010 through May 2010; and using a primary calculation, Mr. M. is liable for child support for K. in the amount of \$1,506 per month for one child from June 2011 and ongoing.
2. All other provisions of CSSD's December 16, 2010 Modified Administrative Child Support and Medical Support Order remain in effect.

DATED the 4th day of March, 2011.

By: Signed

Rebecca L. Pauli
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 March, 2011.

By: Signed

Signature
Rebecca L. Pauli

Name
Administrative Law Judge

Title

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