

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

IN THE MATTER OF:	)	
	)	OAH No. 11-0076-CSS
H L J	)	CSSD No. 001045586
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, H L. J, appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 15, 2010. The obligee children are S, 17, and J, 12. B J J is the children’s mother and custodian of record.

The hearing was held on March 21 and May 9 of 2011. Mr. J appeared by telephone; Ms. J was contacted by telephone for the hearing but declined to participate. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on careful consideration of all the evidence, Mr. J is liable for modified ongoing support of \$232 per month for two children (\$172 for one child), effective October 1, 2010 and ongoing. He is also liable for one month of arrears of \$172 for J’s support during the month of September 2010. CSSD’s Modified Administrative Child Support and Medical Support Order dated December 15, 2010, is affirmed in all other respects.

**II. Facts**

*A. History*

Mr. J’s child support obligation for S was set at \$50 per month in August 1996.<sup>1</sup> Ms. J withdrew from services in 1998,<sup>2</sup> so this case remained closed for many years. In May 2010, the parties’ younger child, J, began receiving public assistance, so on September 30, 2010, CSSD issued a notice initiating a modification review so as to add J to Mr. J’s child support order.<sup>3</sup> On December 15, 2010, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. J’s child support to \$344 per month for both children, effective

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.

October 1, 2010, and added arrears of \$89 for J for the period from May through September 2010.<sup>4</sup> Mr. J appealed on February 23, 2011, asserting that he is currently unemployed and that the children have not been living with the custodian for all the time periods at issue.<sup>5</sup>

*B. Material Facts*

Public assistance and/or state or federal foster care services were initiated on behalf of J in May 2010. Mr. J was incarcerated for a few days in both May and August 2010. He returned to the family home after being released both times, but he had moved out of the parties' residence by the end of August 2010. CSSD and Mr. J agreed during the hearing that he was still a member of the household until September 2010, when his obligation to pay child support should resume pursuant to the modification action.

The children S and J have been in and out of Ms. J's home since the obligor moved out. J has at times been in Northstar Behavioral Hospital for inpatient treatment.<sup>6</sup> S, who herself has a child named Q, has lived with Ms. J and moved in and out of the home several times since September 2010.<sup>7</sup> As of the last report, S and Q were not living with Ms. J.<sup>8</sup> When she is not in the home, S receives some form of public assistance benefits – food stamps or Medicaid – for herself and Q.<sup>9</sup>

Mr. J's work experience includes construction, labor and carpentry.<sup>10</sup> His last job consisted of running a chainsaw to clear power lines.<sup>11</sup> He lives in the Wasilla area and does not currently have a driver's license so it is difficult for him to find employment. The obligor testified he tries to get work on a job where he can park a friend's camper and live in it on site.

Mr. J has not worked since the end of 2009 and has been supporting himself on unemployment benefits (UIB) since then.<sup>12</sup> In 2010, he received UIB of \$9,140.<sup>13</sup> His income

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4 Exh. 4.

5 Exh. 5.

6 Mr. J's hearing testimony; CSSD's April 6, 2011, Post-Hearing Brief at pgs. 1-2, which recites information from Ms. J's case notes maintained by the Division of Public Assistance (DPA).

7 *Id.*

8 CSSD's Post-Hearing Brief at pg. 2.

9 *See* CSSD's May 10, 2011, Submission to Record at pg. 1.

10 Mr. J's hearing testimony.

11 *Id.*

12 Exh. 8 at pgs. 1, 4.

13 Exh. 8 at pgs. 2-3.

that year, including the PFD, totaled \$10,421.<sup>14</sup> He continues to receive UIB in 2011.<sup>15</sup> Inserting Mr. J's total 2010 income into CSSD's online child support calculator,<sup>16</sup> yields a child support amount for that year in the amount of \$232 per month for two children (\$172 per month for one child).<sup>17</sup>

### III. Discussion

Mr. J is challenging his modified child support obligation primarily because he claims he should not be liable for support while the children are not actually living with their mother. As the person who filed the appeal in this case, Mr. J has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.<sup>18</sup>

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>19</sup> 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. If the 15% change has not been met, CSSD may, but is not required to, modify the child support obligation. Adding other children to a child support order is a material change in circumstances that justifies modifying the support order even though the newly calculated support amount may not be more than a 15% change.<sup>20</sup>

CSSD's regulations state that a modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.<sup>21</sup> The notice was issued in this case on September 30, 2010, so the modified child support amount for two children is effective as of October 1, 2010. However, a portion of this case involves the *establishment* of Mr. J's obligation to support J beginning as of May 2010.<sup>22</sup> Thus, he may be charged with J's

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14 Exh. 9 at pg. 2.

15 Exh. 8 at pg. 2.

16 <http://www.childsupport.alaska.gov/>

17 Exh. 9 at pg. 2. CSSD also prepared a calculation for 2009, but the reason is unknown. This appeal concerns a modification review effective as of October 1, 2010, so Mr. J's modified child support amount should be calculated from his 2010 income. CSSD also prepared a 2011 calculation but it was not necessary. See Exh. 10.

18 15 AAC 05.030(h).

19 AS 25.27.190(e).

20 See 15 AAC 125.321(b)(2)(B).

21 15 AAC 125.321(d).

22 See CSSD's Submission to Record at pg. 1.

support beginning in May 2010.<sup>23</sup> But the parties agreed that Mr. J was a member of the household through August 2010, so he is not liable to pay support for J until the month of September 2010. The next month – October 2010 – the modification takes effect.

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," minus mandatory deductions such as taxes and Social Security. CSSD initially calculated Mr. J's modified child support at \$344 per month for two children, based on full-time income imputed to him based on the minimum wage.<sup>24</sup> But Mr. J was laid off from his previous employment and he has been supporting himself on unemployment benefits since then. That, plus his PFD, is the extent of his "total income from all sources." Were the parties living in an intact household, Mr. J's unemployment benefits would have been all he had to contribute to S's and J's support. His child support obligation should thus be calculated from his income from unemployment benefits, not from virtual income imputed to him at the minimum wage. After the hearing, CSSD calculated Mr. J's modified child support amount at \$232 per month for two children (\$172 per month for one child), based on his UIB only and the 2010 PFD. These amounts are correct.

Mr. J's primary issue in the appeal concerns the fact that S and J have not lived with their mother all of the time since the modification became effective. He argues that if the children are not living there, he should not have to pay support for them to Ms. J.

Mr. J is mistaken on this issue. A parent is obligated both by statute and at common law to support his or her children.<sup>25</sup> If public assistance benefits are paid on behalf of the children, the parent must reimburse the state for those benefits and the child support monies are thus directed to the Division of Public Assistance (DPA).<sup>26</sup> If no public funds are expended on the children's behalf, the child support obligation is owed to the custodian. For the most part, the children's location does not change the obligor parent's duty to pay support.

In this case, Mr. J has not lived with either one of his children since September 2010, so as a result his child support case was reopened and modified as of October 2010. He is also liable to pay support for one earlier month for J. He remains liable for paying support for each

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<sup>23</sup> 15 AAC 125.105(a)(1).

<sup>24</sup> Exh. 4 at pg. 12.

<sup>25</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>26</sup> AS 25.27.120(a).

child regardless of their living situations and his obligation is generally continuous so long as he does not live with S and J. As the agency administering his child support case, CSSD will collect his support payment and direct it to the proper payee, either Ms. J or the DPA.

**IV. Conclusion**

Mr. J met his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). He was a member of the household until the end of August 2010 so Mr. J is not liable for paying support for J until September 2010. His obligation was modified as to both children, effective October 1, 2010, and ongoing. CSSD's post-hearing calculations should be adopted.

**V. Child Support Order**

- Mr. J is liable for one month of arrears in the amount of \$172 for J's support during the month of September 2010;
- Mr. J is liable for modified ongoing support of \$232 per month for two children (\$172 per month for one child), effective October 1, 2010 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated December 15, 2010, remain in full force and effect.

DATED this 30<sup>th</sup> day of June, 2011.

By: Signed  
Kay L. Howard  
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 19<sup>th</sup> day of July, 2011.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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