

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

IN THE MATTER OF:)	
)	OAH No. 11-0092-CSS
S R. M)	CSSD No. 001114930
_____)	

REVISED DECISION AND ORDER

I. Introduction

The obligor, S R. M, appeals an Amended Modified Administrative Child Support and Medical Support Order that CSSD issued on July 7, 2010. The obligee child in this case is K, age 11. The custodian is K L. W.

The formal hearing was held on March 31 and May 23, 2011. Mr. M appeared in person at the second session; Ms. W appeared in person at both sessions of the hearing. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

The proposed decision was issued on July 5, 2011, after which Mr. M filed a proposal for action. In general, he claimed that the 2008 and 2009 child support calculations were incorrect. More specifically, he asserted that the 2008 calculation was incorrect because it did not recognize his contribution to a retirement account. An examination of the calculation worksheet, combined with his tax return, reveals that he was correct. The proposed decision was transmitted to the Commissioner of Revenue, along with a suggestion that the appeal be remanded to the administrative law judge for a supplemental hearing.

On August 1, 2011, Deputy Commissioner Jerry Burnett remanded the appeal to the administrative law judge to “take additional evidence about [the] obligor’s income.” The supplemental hearing was held on September 6, 2011. Both parties appeared in person; Andrew Rawls again represented CSSD. During the hearing Mr. M requested an adjustment only in the 2008 calculation, and agreed to the recalculated amount, as did Ms. W and CSSD.

Thus, this revised decision replaces the original decision and order in its entirety. Based on the record and after careful consideration, Mr. M’s child support is modified \$696 per month, effective November 1, 2008; further modified to \$1,289 per month, effective January 1, 2009, and further modified to \$1,014 per month, effective January 1, 2010, and ongoing.

II. Facts

A. History

Mr. M's child support obligation for K was set at \$1,378 per month in September 2007.¹ Mr. M filed a petition for modification on October 6, 2008.² On October 22, 2008, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ Mr. M provided income information.⁴

On March 25, 2009, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. M's ongoing child support to \$571 per month, effective November 1, 2008.⁵ Mr. M did not appeal the order. However, nearly one year later, CSSD discovered a mistake in the modified child support calculation in that Mr. M had been given a double credit for paying medical insurance premiums on K's behalf.⁶ Pursuant to the CSSD director's authority to grant relief under these circumstances,⁷ CSSD initiated an action to correct the modified child support order to \$783 per month.⁸ That correction having been accomplished, CSSD subsequently discovered what it believed to be two additional mistakes in the corrected calculation: first, CSSD used Mr. M's 2009 income to calculate his 2008 child support amount; second, CSSD included in the calculation an additional deduction for Mr. M's support of a prior child whom CSSD now believed had not been adequately documented.⁹

Mr. M objected to the correction regarding his prior child,¹⁰ but CSSD corrected only the mistake regarding the use of Mr. M's 2009 income.¹¹ On July 7, 2010, CSSD issued an amended Modified Administrative Child Support and Medical Support Order that modified at Mr. M's child support to \$975 per month, effective November 1, 2008.¹² Mr. M appealed,

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Pre-Hearing Brief at pg. 1; Exh. 4.
5 Exh. 5.
6 Exh. 6.
7 See 15 AAC 125.125(b)(1).
8 Exhs. 7-9.
9 Exhs. 10-11.
10 Exh. 12.
11 Exh. 13.
12 Exh. 14.

asserting he supports a prior child in his home; he did not receive a PFD in 2009; his health care costs for K have increased; and he contributes to a retirement account.¹³

B. Material Facts

In 2008 and 2009, Mr. M was the sole owner of No Name, Inc., a small business that operates on a seasonal basis. All of the work generated by the company comes by way of competitive bidding – Mr. M prepares the bids and does much of the work. He operates the company out of a home office and leases a yard where his equipment is stored.

In 2010, Mr. M's partner, K B, assumed ownership of 51% of the company's stock. Mr. M retained 49%. This allowed the company to qualify as a minority owned business, which Mr. M claimed should help it financially. The transfer of stocks constituted repayment for loans Ms. B had given Mr. M. Ms. B is otherwise employed – she is a CPA and owns a consulting business.

In 2008, Mr. M's income consisted of \$76,000 received from No Name, Inc. and the permanent fund dividend.¹⁴ Mr. M testified he paid into a retirement fund in 2008. His 2008 tax return shows a retirement deduction of \$5,000, which is \$416.67 per month.¹⁵ His 2008 income and applicable deductions yield a child support amount of \$696 per month, which the parties and CSSD agreed is correct.¹⁶

In 2009, Mr. M's income consisted of \$134,028.¹⁷ He did not receive a 2009 PFD because he missed the filing deadline.¹⁸ In 2010, Mr. M received a salary of \$36,000 and a bonus of \$60,000 from No Name, Inc.¹⁹ Mr. M applied for and received the 2010 PFD.²⁰

Mr. M is the father of a child older than K named H, who is almost 13 years of age. Ms. B is H's mother; she and Mr. M jointly submitted the child's birth certificate and school records and gave supporting testimony at the hearing.²¹ Mr. M is entitled to the deduction for supporting a prior child in the home.

¹³ Exh. 15.

¹⁴ Exh. 4 at pgs. 1, 3.

¹⁵ $\$5,000 \div 12 = \416.67

¹⁶ See Revised Attachment B, generated at the Sept. 16th supplemental hearing on remand.

¹⁷ Exh. H.

¹⁸ Testimony of S M.

¹⁹ Testimony of S M; Exh. I.

²⁰ Testimony of S M.

²¹ Exhs. D, E.

III. Discussion

Mr. M has appealed CSSD's calculation of his modified child support obligation. He has the burden of proving by a preponderance of the evidence that the Amended Modified Administrative Child Support and Medical Support Order is incorrect.²² A modification is effective beginning the month after the parties are served with notice that a modification has been requested.²³ This case has a rather convoluted history because of the corrections CSSD issued after the original modification order, but there is no dispute that this appeal goes back to the modified child support order that became effective on November 1, 2008.²⁴

Child support orders may be modified upon a showing of "good cause and material change in circumstances."²⁵ 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(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. A parent who supports an older child in the home is entitled to an additional deduction from income.²⁶ The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.²⁷

Mr. M's income for the years 2008 forward has been determined and there is sufficient evidence in the record that Mr. M has a prior child in the home. Based on the income amounts set forth in the findings of fact, his child support obligation for each year in question is therefore calculated as follows, with the individual calculation worksheets attached to the end of this decision:

For 2008, Mr. M's child support is calculated at \$696 per month.²⁸ In addition to mandatory deductions for taxes and Social Security, this calculation reflects a prior child

22 15 AAC 05.030(h).

23 15 AAC 125.321(d).

24 The notice that a petition for modification had been requested was issued on October 22, 2008. Exh. 3.

25 AS 25.27.190(e).

26 Civil Rule 90.3(a)(1)(D).

27 *Id.*

28 Revised Attachment B.

deduction of \$975 per month, a retirement deduction of \$416.67 per month, and the income section includes the 2008 PFD.²⁹

For 2009, Mr. M's child support is calculated at \$1,289 per month.³⁰ This calculation reflects a prior child deduction of \$1,611 per month, and no PFD.³¹

For 2010 and ongoing, Mr. M's child support is calculated at \$1,014 per month.³² This calculation reflects a prior child deduction of \$1,267 per month, and includes a 2010 PFD.³³ Although not a 15% change from the 2009 support amount, this calculation reflects the inclusion of a PFD and should be utilized.

Finally, Mr. M also raised the issue of the correct amount of his medical credit. He was informed at the hearing that the insurance premium issue would be referred back to his caseworker to make the correct determinations based on the information provided. This is a much more efficient process, as it allows CSSD to make subsequent adjustments in the medical credit without having to go through the entire modification process.

IV. Conclusion

Mr. M met his burden of proving by a preponderance of the evidence that CSSD's Amended Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). The correct support amounts have been determined, as discussed above, and should be adopted.

V. Child Support Order

- Mr. M's child support is modified to \$696 per month, effective November 1, 2008; further modified to \$1,289 per month, effective January 1, 2009; and further modified to \$1,014 per month, effective January 1, 2010, and ongoing.

29 Attachment A.
30 Attachment D.
31 Attachment C.
32 Attachment F.
33 Attachment E.

- All other provisions of the Amended Modified Administrative Child Support and Medical Support Order dated July 7, 2010, remain in full force and effect.

DATED this 15th day of September, 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 15th day of September, 2011.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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