

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

IN THE MATTER OF: )  
 )  
C. A. E. ) OAH No. 11-0093-CSS  
 ) CSSD No. 001116118  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

C. E. requested a modification of his existing child support obligation. E. M. P. is the custodian of record. Their child is R. S. P.

A hearing was held on April 4, 2011. Both parents appeared by telephone. Child Support Services Division (CSSD) was represented in person by Child Support Specialist Erinn Brian. The record was left open after the hearing for CSSD to submit evidence of Mr. E.'s earnings since 2007.<sup>1</sup>

Based on the record and the testimony at the hearing, Mr. E.'s ongoing support obligation should be set at \$233 per month effective November 1, 2010.

**II. Facts**

*A. Background*

The Office of Administrative Hearings issued a Decision and Order on May 26, 2005 setting Mr. E.'s child support obligation at \$665 per month.<sup>2</sup> On October 25, 2010, CSSD received a modification request from Mr. E.<sup>3</sup> Notice of Petition for Modification of Administrative Support Order was mailed to both parents on October 28, 2010.<sup>4</sup> CSSD denied the modification request.<sup>5</sup> Mr. E. appealed, stating in part that he has not worked full time since 2008, and that he has been homeless, living with family and friends, since January of 2010.<sup>6</sup>

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<sup>1</sup> That evidence has been submitted in the form of an affidavit, which has been marked as Exhibit 6.

<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibit 2.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Exhibit 5. Mr. E.'s appeal was filed late. Pursuant to 15 AAC 05.030(k), the deadline for filing an appeal was extended in order to avoid an injustice.

*B. Material Facts*

Prior to 2008, Mr. E. was employed by the federal government earning over \$80,000 per year.<sup>7</sup> He resigned that position in April of 2008.<sup>8</sup> Mr. E. received nearly \$15,000 in unemployment benefits in 2009.<sup>9</sup> During 2010, he held four different jobs, earning a total of \$8,659.23, plus an additional \$5,346 in unemployment benefits.<sup>10</sup>

In its post-hearing submission, CSSD recalculated a proposed child support obligation for Mr. E. based on his 2010 income, including unemployment benefits and a Permanent Fund Dividend payment. That recalculation results in a proposed child support obligation of \$233 per month.<sup>11</sup>

**III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>12</sup> 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."<sup>13</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 modify the child support obligation, but is not required to do so. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>14</sup> Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.<sup>15</sup>

Mr. E.'s financial situation has changed substantially since the existing child support order was entered in 2005. No claim has been made that he is voluntarily and unreasonably

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<sup>7</sup> Testimony of Mr. E.; Exhibit 6, page 2.

<sup>8</sup> Testimony of Mr. E.

<sup>9</sup> Exhibit 6, page 3.

<sup>10</sup> Exhibit 6, pages 2 and 3.

<sup>11</sup> Exhibit 6, page 6.

<sup>12</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>13</sup> AS 25.27.190(e).

<sup>14</sup> 15 AAC 125.321(d).

<sup>15</sup> 15 AAC 05.030(h).

unemployed or underemployed.<sup>16</sup> While he is not currently employed, he did hold four different jobs for varying lengths of time during 2010. He is likely able to earn a similar amount this year and in the future. Therefore, Mr. E.'s support obligation should be based on his 2010 earnings.<sup>17</sup>

Between wages, unemployment benefits, and a Permanent Fund Dividend, Mr. E. earned \$15,286.23 during 2010.<sup>18</sup> This results in a child support obligation of \$233 per month for one child.<sup>19</sup> This is more than 15% less than his current child support obligation, so a modification is appropriate.

#### **IV. Conclusion**

Based on his expected current income, Mr. E.'s support obligation is more than 15% lower than his existing obligation. His ongoing child support obligation should be modified and set at \$233 per month for one child.

#### **V. Child Support Order**

- Mr. E.'s ongoing child support obligation is set at \$233 per month effective November 1, 2010;
- All other provisions of the Amended Administrative Child Support and Medical Support Order issued September 6, 2004 remain in effect.

DATED this 8<sup>th</sup> day of April, 2011.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>16</sup> Whether he was unreasonably unemployed immediately after resigning his federal government job is an open question. Mr. E. did not seek to modify his support obligation until October of 2010, 18 months later. Any modification will not be effective until November of 2010, and there was no claim that Mr. E. has been unreasonably unemployed or underemployed since that time.

<sup>17</sup> Civil Rule 90.3 Commentary III.E. (Support should be based on the income that will be earned when the support is to be paid.)

<sup>18</sup> Exhibit 6, page 6.

<sup>19</sup> *Id.*

**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 29<sup>th</sup> day of April, 2011.

By: Signed  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

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