

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

IN THE MATTER OF:)	
)	OAH No. 11-0102-CSS
W. L. P., JR.)	CSSD No. 001057111
_____)	

DECISION AND ORDER

I. Introduction

The obligor, W. L. P., Jr., appeals a Modified Administrative Child Support and Medical Support Order that CSSD issued in his case on March 3, 2011. The obligee child is K., age 15. The custodian is A. M. G.

The formal hearing was held on April 5, 2011. Mr. P. appeared in person; Ms. G. participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. P.'s child support is modified to \$992 per month, effective February 1, 2011, and ongoing.

II. Facts

A. History

Mr. P.'s child support obligation for K. was set at \$158 per month in 1998.¹ Ms. G. filed a petition for modification on January 10, 2011.² On January 19, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. P. did not provide income information.⁴ On March 3, 2011, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. P.'s child support to \$1,129 per month, effective February 1, 2011.⁵ He appealed the order on March 17, 2011.⁶

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Pre-Hearing Brief at pg. 1.
5 Exh. 4.
6 Exh. 5.

B. Material Facts

Mr. P. has been employed as a carpenter for C. G. C. for the past eight years. He earns \$38.62 per hour and currently receives little overtime. Union dues are deducted from his paychecks based on the number of hours he works but he also pays a portion of his dues directly to the union on a monthly basis. Contributions to his retirement fund are made through his union.

Mr. P.'s total earnings in 2011 are estimated to be \$80,329.60.⁷ This figure, when inserted into CSSD's online calculator⁸ results in a child support amount of \$992 per month for one child.⁹ This calculation includes the income received from the PFD and the deductions for taxes, Social Security and Medicare, and his union dues.

Mr. P. has five children in the home ranging in age from 13 years down to 3 months. The oldest is his stepchild and all five of them are younger than K., the child in this case. Mr. P. stated at the hearing that he did not raise the issue of his other children in order to request a hardship variance but to inform the tribunal that he has several other children to support.

III. Discussion

Mr. P. has appealed CSSD's calculation of his modified child support obligation because it did not contain any deductions for union dues. He has the burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.¹⁰

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ In a modification situation, if the child support amount calculated from the obligor's total income is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that "good cause and material change in circumstances" has occurred such that the order may be modified.

For the modification review, CSSD calculated Mr. P.'s modified child support at \$1,129 per month based on his total 2010 income as reported to the Alaska Department of Labor and

⁷ \$38.62 x 2080 hours = \$80,329.60. In 2010, he earned \$87,611.78, but the higher figure is due to Mr. P. working out of town several months in early 2010 and receiving a significant amount of overtime pay. *See* Obligor's Exh. A at pg. 9.

⁸ <http://www.childsupport.alaska.gov/>

⁹ Exh. 7.

¹⁰ 15 AAC 05.030(h).

¹¹ AS 25.27.190(e).

Workforce Development.¹² During the hearing process Mr. P. established that his estimated 2011 earnings are lower than his actual 2010 income because he worked out of town for several months early in 2010 and received a significant amount of overtime. Currently, however, he is not working out of town and receives little overtime.¹³ Thus, it would be unfair to calculate his 2011 modified child support amount from earnings that exceed his expected 2011 income by over \$7,000.

After the hearing, CSSD estimated Mr. P.'s 2011 earnings at \$80,329.60 and from this figure calculated a modified child support amount of \$992 per month.¹⁴ This is the correct amount, based on Mr. P.'s current income.

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of February 1, 2011.¹⁵

IV. Conclusion

Mr. P. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). That order, which modified his child support to \$1,129 per month should be adjusted to \$992 per month, effective February 1, 2011, based on his current income.

V. Child Support Order

- Mr. P. is liable for modified child support for K. in the amount of \$992 per month, effective February 1, 2011, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 3, 2011, remain in full force and effect.

DATED this 9th day of May, 2011.

By: Signed _____
Kay L. Howard
Administrative Law Judge

¹² Exh. 4 at pg. 6.

¹³ See Exh. A at pgs. 1-7.

¹⁴ Exh. 7.

¹⁵ 15 AAC 125.321(d). In this case, the notice was issued on January 19, 2011. Exh. 3.

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 27th day of May, 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.]