

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

IN THE MATTER OF: )  
 )  
C. M. O. ) OAH No. 11-0133-CSS  
 ) CSSD No. 001160915  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The obligor, C. M. O., appeals a decision denying modification of a prior child support order. The custodial parent is C. M. and the obligee child is S. O. M.

A hearing was held on May 5, 2011. Child Support Services Division (CSSD) was represented by Child Support Specialist Andrew Rawls. Both parents appeared in person. Because the parents did not speak English as their native language, an interpreter was present to assist in providing testimony and in the parties' understanding of the proceedings.

Based on the evidence in the record, Mr. O.'s child support obligation should be set at \$450 per month for one child.

**II. Facts**

*A. Background*

An Administrative Child Support and Medical Support Order was issued on March 8, 2010, setting Mr. O.'s child support obligation at \$641 per month.<sup>1</sup> Mr. O. requested a modification of that amount.<sup>2</sup> Notice of Petition for Modification of Administrative Support Order was mailed on December 16, 2010.<sup>3</sup> CSSD denied the request for modification on February 10, 2011.<sup>4</sup> Mr. O. requested a formal hearing and stated that he should receive credit for an older child living in his home.<sup>5</sup> Prior to the hearing, Mr. O. submitted a letter and supporting documents for consideration at the hearing. These have been marked as Exhibit 8.

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 3.  
<sup>4</sup> Exhibit 5.  
<sup>5</sup> Exhibit 6.

*B. Material Facts*

Mr. O. has a total of five children, including S.<sup>6</sup> J. is the youngest. The other three are all older than S. G. lives in Mr. O.'s household. Y. lives with her mother in the Dominican Republic. M. lived with Mr. O. until recently, and is over the age of 18.

Mr. O. works full time for No Name Services and earns \$15.92 per hour.<sup>7</sup>

**III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>8</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>9</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>10</sup> Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.<sup>11</sup>

With an hourly wage of \$15.92, full time employment would result in annual income of about \$33,000. However, Mr. O. also earns overtime wages.<sup>12</sup> His tax returns show he earned \$46,771 in 2009<sup>13</sup> and \$43,419 in 2010.<sup>14</sup> It is reasonable to assume that he will earn at least \$43,419 in 2011. This is the amount CSSD used in deciding whether his support obligation should be modified.<sup>15</sup> CSSD did not, however, give Mr. O. any credit for supporting his older children.

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6 The factual findings are based on Mr. O.'s testimony unless otherwise indicated.  
7 Exhibit 8, page 6.  
8 *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.  
9 AS 25.27.190(e).  
10 15 AAC 125.321(d).  
11 15 AAC 05.030(h).  
12 See Exhibit 8, page 7.  
13 Exhibit 4, page 12.  
14 Exhibit 4, page 1.  
15 Exhibit 5, page 3.

In calculating child support obligations, credit is given for supporting the children of prior relationships who are living with the obligor parent.<sup>16</sup> Mr. O. is entitled to credit for one child, G., who is living in his household and who is older than S. Until recently, M. was living with Mr. O. She would have been at least 18 years old in December of 2010 when Mr. O. requested a modification. He is not entitled to any adjustment for supporting children over the age of 18.

Mr. O. is also potentially eligible for an adjustment for supporting his daughter Y. He testified that he sends various amounts of money to Y.'s mother each month.<sup>17</sup> In 2010, he averaged \$278 per month.<sup>18</sup> He testified that more recently, he has only been able to afford to send about \$100 per month. An obligor parent may receive credit for child support paid to support an older child not living in his or her household.<sup>19</sup> To receive credit, the payments must be actually paid and there must be an administrative or court order requiring the payment.<sup>20</sup> There is no evidence of an administrative or court order requiring the payments to support Y. Accordingly, Mr. O. is not entitled to credit for these payments.<sup>21</sup>

Mr. O. also asked that his amount of his support obligation should be reduced because paying the calculated amount would result in financial hardship. A child support award can be varied if there is clear and convincing evidence that manifest injustice would occur if the support award was not varied.<sup>22</sup> This determination requires an examination of the custodial parent's circumstances as well as the obligor's circumstances. Mr. O. did not provide clear and convincing evidence that the financial hardship resulting from paying this child support award would result in manifest injustice. His expenses are high relative to his income, but not so high as to justify reducing his payment and shifting a portion of the cost of supporting S. to Ms. M., who also has limited income and one child to support in addition to S.<sup>23</sup>

Mr. O. should, however, receive credit for the voluntary payments he is making to support Y. Allowing this credit encourages parents to voluntarily support their children. The

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<sup>16</sup> Civil Rule 90.3(a)(1)(D).

<sup>17</sup> *See also*, Exhibit 18, pages 15 – 17 (records of money order transfers).

<sup>18</sup> Exhibit 18, pages 15 – 17.

<sup>19</sup> Civil Rule 90.3(a)(1)(C).

<sup>20</sup> *Id.*

<sup>21</sup> As discussed below, he should receive a credit under Rule 90.3(c). Civil Rule 90.3 Commentary III D.

<sup>22</sup> Civil Rule 90.3(c)(1).

<sup>23</sup> She testified that her take home pay was between \$500 and \$600 every two weeks. This is less than \$15,000 per year.

difference in his child support obligation based on this credit is not so large as to place an undue burden on Ms. M. Both parents testified that they wanted the child support award to be what is “fair.” Under the circumstances of this case, it is appropriate and fair to provide this credit for Mr. O. in the amount of \$100 per month, which is the amount he has recently been paying.

Without any credit for the voluntary payments for Y., Mr. O.’s child support obligation would be \$488 per month for one child.<sup>24</sup> This includes credit for supporting G., and credit for his union dues. It is difficult to predict precisely how much money Mr. O. will send to Y. in the future. An average of last year’s payments of \$278 per month with the more recent payments of \$100 per month results in an estimate of \$190 per month. Including credit at \$190 per month for the voluntary payments to Y., Mr. O.’s child support obligation is reduced to \$450 per month for one child.<sup>25</sup>

#### **IV. Conclusion**

CSSD’s denial of the request for modification is reversed. Mr. O.’s child support obligation should be set at \$450 per month for one child. This amount includes an adjustment for union dues, and for supporting children from prior relationships.

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

- Mr. O.’s child support obligation is set at \$450 per month effective January 1, 2011.
- All other provisions of the Administrative Child Support and Medical Support Order dated March 8, 2010 remain in full force and effect.

DATED this 9<sup>th</sup> day of May, 2011.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>24</sup> Attachment A.

<sup>25</sup> Attachment B.

**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 27<sup>th</sup> day of May, 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.]