

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

IN THE MATTER OF: )  
 )  
 M. G. G. ) OAH No. 11-0148-CSS  
 ) CSSD No. 001145209  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The obligor, M. G. G., appealed the denial of his request for modification of his child support obligation. The obligee child is V. G. The custodian of record is A. J.

A hearing was scheduled for May 5, 2011. Neither Mr. G. nor Ms. J. were present in person or available by telephone. Subsequently, Mr. G. wrote to explain his absence. It was determined that good cause existed for his failure to appear at the hearing,<sup>1</sup> and a supplemental hearing was scheduled.

The supplemental hearing was held on June 9, 2011. Mr. G. appeared in person. Child Support Services Division (CSSD) was represented by Child Support Specialist Andrew Rawls. Ms. J. did not appear in person and was not available at the telephone number listed for her in the record.

Based on the evidence in the record, and the testimony at the hearing, Mr. G.'s child support is modified and set at \$190 per month effective February 1, 2011.

**II. Facts**

*A. Background*

CSSD issued an Administrative Child Support and Medical Support Order on January 16, 2007, setting Mr. G.'s child support obligation at \$280 per month.<sup>2</sup> Mr. G. requested a modification of that child support obligation in January of 2011, and Notice of Petition for Modification of Administrative Support Order was mailed on January 28, 2011.<sup>3</sup> The request for

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<sup>1</sup> 15 AAC 05.030(j).  
<sup>2</sup> Exhibit 1.  
<sup>3</sup> Exhibit 3.

modification was denied by CSSD because the amount calculated by CSSD was not 15 percent greater or less than the existing support order.<sup>4</sup> Mr. G. appealed.<sup>5</sup>

*B. Material Facts*

Mr. G. works as a mechanic for No Name Business, earning \$9.00 per hour.<sup>6</sup> During the last quarter of 2010 and the first quarter of 2011, Mr. G. earned a total of \$7,258.50.<sup>7</sup> This is the equivalent of \$14,517 per year. Mr. G. has one older child from a prior relationship living in his home.

**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>

Mr. G. has met his burden of proving that CSSD's denial of his modification request was incorrect.<sup>11</sup> There is nothing in the record to support CSSD's prior income calculation, and he has submitted information as to his actual wages which have been less than the amount assumed by CSSD. In addition, CSSD has reviewed the Department of Labor records to determine the amount Mr. G. has been earning.

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<sup>44</sup> Exhibit 5. The amount calculated by CSSD was based on an assumption that Mr. G. could earn minimum wage for 2080 hours per year. Exhibit 5, page 3.

<sup>5</sup> Exhibit 6.

<sup>6</sup> Exhibit 6; Exhibit 10.

<sup>7</sup> Exhibit 7.

<sup>8</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>9</sup> AS 25.27.190(e).

<sup>10</sup> 15 AAC 125.321(d).

<sup>11</sup> 15 AAC 05.030(h).

Mr. G.'s child support obligation should be based on the amount he is likely to earn when his support payments are due.<sup>12</sup> His most recent six months of income is a good estimate of what he will continue to earn in the future. As discussed above, that will be of \$14,517 per year. At the hearing, Mr. G. agreed that this amount is a good estimate of his current income. He also agreed to CSSD's support calculations based on that income.

Because Mr. G. is supporting a child from a prior relationship in his household, CSSD first calculated the amount of credit Mr. G. is entitled to for that child.<sup>13</sup> CSSD then calculated the support obligation owed to V. after allowing credit for the prior child.<sup>14</sup> These calculations result in a child support obligation of \$190 per month.

Mr. G. also raised concerns about how his arrears have been calculated and whether he is receiving proper credit for payments made. He believes his arrears have kept going up despite the fact that his payments have exceeded his support obligation and interest charges. He also does not appear to have received credit for PFD checks which he says have been garnished.<sup>15</sup> Finally, most if not all of the arrears from Washington State accrued, according to Mr. G., at a time when he actually had physical custody of the child in question. This hearing was not the proper forum for resolving these concerns. CSSD has, however, agreed to conduct an audit of his arrears and attempt to resolve Mr. G.'s concerns. He may also be entitled to some relief under Civil Rule 90.3(h)(3).<sup>16</sup>

#### **IV. Conclusion**

Mr. G. has met his burden of establishing that CSSD should not have denied his modification request. Based on the evidence in this case, Mr. G.'s support obligation should be set at \$190 per month for one child.

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<sup>12</sup> Civil Rule 90.3, Commentary III E.

<sup>13</sup> Exhibit 9, page 2; Civil Rule 90.3(a)(1)(D).

<sup>14</sup> Exhibit 9, page 1.

<sup>15</sup> See Exhibit 8.

<sup>16</sup> Retroactive modifications are not allowed, but under this provision a parent may -- under limited circumstances -- be precluded from collecting arrears that accrued while the obligor had physical custody of the child.

**V. Child Support Order**

- Ongoing child support is set at \$190 per month, effective February 1, 2011.
- All other provisions of the January 16, 2007 Administrative Child Support and Medical Support Order remain in full force and effect.

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

By: Signed  
Jeffrey A. Friedman  
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 27<sup>th</sup> day of June, 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.]