

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

IN THE MATTER OF:)
)
 C C. C) OAH No. 11-0179-CSS
) CSSD No. 001061960
_____)

DECISION AND ORDER

I. Introduction

The obligor, C C, appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The obligee child is E K. The current custodian of the child is C K.

A hearing was held on June 20, 2011. Ms. K was not available at the phone number in the record for her. Mr. C appeared in person, and CSSD was represented in person by Child Support Specialist Erinn Brian. Based on the evidence in the record, Mr. C' ongoing child support obligation should be set at \$229 per month.

II. Facts

A. Background

An Administrative Child Support and Medical Support Order dated October 21, 2010, was issued by CSSD.¹ That order set Mr. C' child support obligation at \$541 per month. Mr. C requested a modification on January 24, 2011.² Notice of Petition for Modification of Administrative Support Order was mailed on January 28, 2011. CSSD issued a Modified Administrative Child Support and Medical Support Order reducing Mr. C' support obligation to \$293 per month.³ Mr. C appealed that decision, arguing for a lower support obligation.⁴

¹ Exhibit 1.

² Exhibit 2. He dated his request for 2010, but that appears to be an error as the original order he is seeking to modify was not entered until October of that year.

³ Exhibit 5.

⁴ Exhibit 6.

B. Material Facts

Mr. C works as a garage door installer. He has been working for his parents, and has been paid as an independent contractor, receiving a total of \$7,550 for the first five months of the year.⁵ He has two other children living in the home with him, one of whom is older than E.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁶ 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."⁷ 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.⁸ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.⁹

CSSD has suggested that Mr. C is underemployed. When a parent is voluntarily and unreasonably underemployed, additional income can be imputed to that parent with the higher income amount used to calculate child support.¹⁰ Considering Mr. C' experience as a garage door installer, he should be able to earn more than he is. There is, however, no finding of underemployment in the modified support order.¹¹ Nor is there evidence in the record of jobs available to him or amounts he might be able to earn through reasonable efforts. At this time, the record is insufficient to establish that his low earnings are both voluntary and unreasonable.

Mr. C' earnings through May would equate to an annual income of \$18,120. He is entitled to credit for having an older child in his household.¹² Using CSSD's online child

⁵ Exhibit 4, pages 3 – 5; Exhibit 8, pages 2 – 3.

⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁷ AS 25.27.190(e).

⁸ 15 AAC 125.321(d).

⁹ 15 AAC 05.030(h).

¹⁰ Civil Rule 90.3(a)(4).

¹¹ Exhibit 5, page4.

¹² Attachment A, page 2 shows the calculation for the credit he should receive for this child.

support calculator, Mr. C' child support obligation should be set at \$229 per month for one child.¹³

IV. Conclusion

Although Mr. C' income is low for someone with his skills and experience, it has not been shown that he is voluntarily and unreasonably underemployed. His ongoing child support obligation should be set at \$229 per month for one child.

V. Child Support Order

- Mr. C' ongoing child support obligation is set at \$229 per month, effective February 1, 2011.
- All other provisions of the April 6, 2011 Modified Administrative Child Support and Medical Support Order remain in effect.

DATED this 30th day of June, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

¹³ Attachment A, page 1.

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 26th day of July, 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.]