

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

IN THE MATTER OF:)

B G. H)

) OAH No. 11-0189-CSS

) CSSD No. 001131195

DECISION AND ORDER

I. Introduction

The custodian, A S. J, appealed a Notice of Denial of Modification Review that the Child Support Services Division (CSSD) issued in Mr. H's case on April 29, 2011. The obligee child is O, 7 years of age.

The hearing was held on June 9, 2011. Mr. H appeared in person; Ms. J participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, CSSD's Notice of Denial of Modification Review is vacated and Mr. H's child support obligation is modified to \$647 per month for one child, effective April 1, 2011; and further modified to \$610 per month, effective July 1, 2011 and ongoing.

II. Facts

A. Background

Mr. H's child support obligation for O was set at \$349 per month in March 2010.¹ Ms. J requested a modification review on March 3, 2011.² On March 14, 2011, CSSD notified the parties that a modification review had been requested.³ Mr. H provided income information.⁴ On April 29, 2011, CSSD issued a Notice of Denial of Modification Review for the reason that "[t]here is a pending court action regarding custody."⁵ Ms. J appealed on May 16, 2011, asserting that she was awarded interim custody.⁶

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Exh. 4.
5 Exh. 5.
6 Exh. 6.

B. Material Facts

Mr. H and Ms. J are the parents of O, who is 7 years old. The parties are currently involved in custody litigation and have participated in mediation while they await their court hearing later this year. They entered into an agreement in late 2010, which the court adopted, that Mr. H would have visitation on alternate weekends from Friday at 7 p.m. through Sunday at 5 p.m.⁷ The court later ordered them to follow the agreement up until the time of their hearing.⁸

Mr. H has a 16 year-old child named C, for whom he pays support in the amount of \$257 per month through CSSD. Mr. H testified that he also has custody of C on a 50/50 basis, so he was directed to file an affidavit from C's mother, T P, which he did after the hearing. However, Ms. P's affidavit was unsigned. The record was reopened in order to obtain a signed affidavit of Ms. P, which she later provided.⁹

Mr. H submitted income information for 2010.¹⁰ He had several employers during that year and his earnings totaled \$30,021.59. He also had unemployment benefits of \$2,350 and Native corporation dividends of \$421. When the PFD is added, Mr. H's total gross income for 2010 was \$34,073.59. A child support calculation based on this income figure equals \$382 per month.¹¹ This calculation is not necessary because Mr. H is employed and his current annual income is fairly easy to estimate.

Mr. H testified that he obtained new employment in early 2011. On February 23, 2011, he began working on the North Slope on a 2 weeks-on/2 weeks-off schedule. He works 79 hours per week at a pay rate of \$25.80 per hour. Using his hourly wage and work schedule, plus his Native corporation dividends of \$421 per month, CSSD estimated Mr. H's 2011 income from earnings at \$56,645.58.¹²

After the hearing CSSD was direct to submit two revised child support calculations for Mr. H's modification. The first reflects his child support obligation for the months of April, May

⁷ Exh. 7 at pgs. 3-4.

⁸ Exh. 7 at pg. 2.

⁹ Signed Affidavit of T P, received August 9, 2011.

¹⁰ Exh. 9.

¹¹ Exh. 10 at pg. 1.

¹² Exh. 11 at pg. 1. CSSD documented the math it used for the calculation, which takes into consideration his hourly wage, overtime hourly wage and the total estimated hours he is expected to work from his hire date through the end of the year. *See* Exhibit 11 at page 3.

and June 2011. For this period, CSSD calculated Mr. H's child support at \$647 per month.¹³ In addition to mandatory deductions for federal income tax, Social Security and Medicare, there is a deduction for paying support for a prior child of \$257.24 per month and one half of the deduction for supporting a prior child in the home, \$367.50 per month.¹⁴

The second calculation is effective as of July 1, 2011. It is nearly identical to the first calculation, except that it also includes a retirement deduction of \$207.12 per month to reflect that Mr. H began paying into a retirement account as of July 1, 2011.¹⁵ This adjustment reduces the child support amount to \$610 per month.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁶ 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. As the person who filed the appeal in this case, Ms. J has the burden of proving by a preponderance of the evidence that CSSD issued the Notice of Denial of Modification Review in error and that Mr. H's child support should, in fact, be modified.¹⁷

CSSD denied the petition for modification on the basis that "[t]here is a pending court action regarding custody."¹⁸ This is not an allowable reason for denying a modification review. If a child support amount calculated from the obligor parent's income is more than a 15% change from the previous order, modification is warranted based on the custody status of the child known at that time. If the child's custody changes pursuant to a court order, one or both of the parties have the responsibility to notify CSSD of the change and request a modification on that basis. Simply because the parties do not have a final custody order for the child is not a recognized reason to deny a modification review.

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," minus mandatory deductions such as taxes

¹³ Exh. 11 at pgs. 1-3.
¹⁴ Exh. 11 at pgs. 1-2.
¹⁵ Exh. 12 at pg. 1.
¹⁶ AS 25.27.190(e).
¹⁷ 15 AAC 05.030(h).
¹⁸ Exh. 5.

and Social Security. A parent who supports an older child – either by paying support for the child or supporting the child in the home – is entitled to an additional deduction from income.¹⁹ The deduction is either the amount of the child support payment or, if the older child is living in the paying parent’s home, the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.²⁰

In the situation in which the parent is both paying support to the other parent *and* has shared custody of the child, both deductions are warranted. The child support payment is listed on the appropriate line and the second deduction is determined by the percentage amount of shared custody the parent actually exercises.²¹ In Mr. H’s case, CSSD determined that if C lived with him full-time, he would be entitled to a deduction of \$735 per month, the amount of a one-child support calculation based on his estimated income for 2011.²² Since he exercises only 50-50 custody, CSSD multiplied that number by 50%, which yielded a result of \$367.50 per month. This is the amount of the additional deduction Mr. H is entitled to for supporting C in his home on a 50-50 basis.

Using the above methodology, CSSD proposed that Mr. H’s child support obligation be modified to \$647 per month for one child, effective April 1, 2011; and further modified to \$610 per month, effective July 1, 2011 and ongoing. These calculations appear to be correct and reasonably reflect his ability to pay support.

IV. Conclusion

Ms. J met her burden of proving by a preponderance of the evidence that CSSD’s Notice of Denial of Modification Review was issued in error. CSSD incorrectly denied a modification review because the parties are in custody litigation. Mr. H’s income warrants a modification because a child support calculation based on his current income is more than a 15% change from the prior order. CSSD correctly calculated Mr. H’s child support at \$647 per month for one child, effective April 1, 2011, and \$610 per month, effective July 1, 2011 and ongoing. These calculations appear to be correct and should be adopted.

¹⁹ Civil Rule 90.3(a)(1)(C)-(D).

²⁰ Civil Rule 90.3(a)(1)(D).

²¹ Say, for example, that a parent pays \$200 in child support through CSSD and exercises 50/50 shared custody of the child. The

²² Exh. 12 at pg. 2.

V. Child Support Order

- CSSD's April 29, 2011, Notice of Denial of Modification Review is vacated;
- Mr. H's child support obligation for O is modified to \$647 per month, effective April 1, 2011; and further modified to \$610 per month, effective July 1, 2011 and ongoing;
- All other provisions of the prior order in effect in Mr. H's case, the Modified Administrative Child Support and Medical Support Order dated March 11, 2010, remain in full force and effect.

DATED this 30th day of August, 2011.

By: Signed
Kay L. Howard
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 29th day of September, 2011.

By: Signed
Signature
Angela Rodell
Name
Deputy Commissioner
Title

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