

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

IN THE MATTER OF:)

B. C. G.)

) OAH No. 11-0193-CSS
) CSSD No. 001137718
)

DECISION AND ORDER

I. Introduction

The obligor, B. G., appealed a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). A. N. H. is the custodian of record and K. S. G. is the obligee child.

A hearing was held on June 13, 2011. Mr. G. appeared in person. CSSD was represented in person by Child Support Specialist Andrew Rawls. Ms. H. could not be reached at the phone numbers available for her.

Based on the evidence in the record, Mr. G.'s child support obligation should be set at \$911 per month.

II. Facts

A. Background

An Administrative Child Support and Medical Support Order was issued on August 19, 2005, setting Mr. G.'s support obligation at \$457 per month for one child.¹ Ms. H. requested a modification on February 10, 2011.² Notice of Petition for Modification of Administrative Support Order was sent to the parties on March 30, 2011.³ A Modified Administrative Child Support and Medical Support Order, setting the child support obligation at \$969, was issued on May 11, 2011.⁴ Mr. G. appealed that modified order.⁵

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¹ Exhibit 1.
² Exhibit 2.
³ Exhibit 3.
⁴ Exhibit 5.
⁵ Exhibit 6.

B. Material Facts

Mr. G. works for CH2M Hill Alaska, Inc.⁶ In 2010, he earned \$77,123.04, including overtime pay.⁷ Mr. G. works on the North Slope where he is occasionally eligible for overtime work. Overtime is not always available, and when it is, he is not required to accept it. It is usual, however, for him to work some amount of overtime each year.⁸

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ 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."¹⁰ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "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.¹¹ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹²

Mr. G. raised three points during the hearing. First, CSSD calculated his total annual income to be \$87,527.72.¹³ This amount was calculated from the year to date earnings shown on his April 19, 2011 paystub, and annualizing that amount over a full year.¹⁴ Mr. G. argued that this amount was more than he was likely to earn and significantly higher than the amount shown on his 2010 W-2. Because Mr. G.'s overtime earnings are variable, his total income during 2010 is a better estimate of what he will earn during 2011. However, the amount shown as taxable

⁶ Exhibit 4, page 1.

⁷ Exhibit 4, page 10. This page is Mr. G.'s 2010 W-2 statement showing wages subject to FICA tax. His taxable wages shown on this document were lower because medical and retirement deductions were made pre-tax.

⁸ G. testimony.

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹⁰ AS 25.27.190(e).

¹¹ 15 AAC 125.321(d). In this case, because the Notice of Petition for Modification of Administrative Support Order was not mailed until March 30, it is unlikely to have been served prior to April 1. Thus, any modification would be effect on May 1, 2011.

¹² 15 AAC 05.030(h).

¹³ Exhibit 5, page 6.

¹⁴ Exhibit 5, page 7.

income on Mr. G.'s W-2 and on his tax return was not his total income. Mr. G.'s total income includes the non-taxable portion of his wages. The amount shown on his W-2 as wages subject to FICA is the amount of his annual income.

Mr. G.'s next issue is that overtime wages should not be included in the calculation of his annual income for child support purposes because overtime is not guaranteed and is optional. A parent's income includes income from all sources.¹⁵ This includes overtime pay.¹⁶ Mr. G. is offered the opportunity to accept overtime work at various times throughout the year, and has regularly accepted that opportunity. It is therefore appropriate to include overtime pay as part of his estimated total income for 2011.

Finally, Mr. G. argued that he should receive credit for providing health insurance for K. Mr. G. did not know the monthly amount he is paying to have K. included on his insurance. He should obtain that information from his employer and provide it to his caseworker. CSSD can then give him the appropriate credit for providing health insurance.

As stated above, Mr. G.'s support obligation should be based on his total earnings in 2010. In calculating that obligation, Mr. G. is entitled to a credit for his voluntary contributions towards his retirement plan, up to a maximum of 7.5% of gross wages.¹⁷ Using CSSD's online support calculator, Mr. G.'s child support should be set at \$911 per month.¹⁸

IV. Conclusion

Mr. G. has met his burden of proving that CSSD's calculation of his child support obligation was incorrect. Based on the testimony and other information in the record, his child support should be set at \$911 per month for one child. Because this is more than 15% greater than the current child support obligation, there is a material change in circumstances, and his obligation should be modified.

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¹⁵ Civil Rule 90.3(a)(1).

¹⁶ Civil Rule 90.3 Commentary III.A.1. *But see*, Commentary VI.B.9 (discretion to exclude overtime in some situations).

¹⁷ Civil Rule 90.3(a)(1)(B).

¹⁸ Attachment A.

V. Child Support Order

- Mr. G.'s ongoing child support obligation is set at \$911 per month effective May 1, 2011.
- All other provisions of the May 11, 2011 Modified Administrative Child Support and Medical Support Order remain in full force and effect.

DATED this 15th 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 5th 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.]