

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

IN THE MATTER OF:)
)
 R. J. C.) OAH No. 11-0224-CSS
) CSSD No. 001155548
_____)

DECISION AND ORDER

I. Introduction

The obligor, R. C., appeals the denial of his request for modification of his existing child support order. The child in this case is D. L., and the custodian of record is R. L.

A hearing was held on June 21, 2011. Both parents participated by telephone. Child Support Services Division (CSSD) was represented by Child Support Specialist Andrew Rawls. Mr. C. had also submitted a written statement dated June 13, 2011. Based on the evidence in the record, and the testimony of Mr. C., child support should be set at \$50 per month.

II. Facts

A. Background

A Modified Administrative Child Support and Medical Support Order was issued by CSSD on June 11, 2009, setting Mr. C.'s support obligation at \$249 per month.¹ Mr. C.'s requested modification of that order.² Notice of petition for Modification of Administrative Support Order was served in February of 2011.³ Mr. C. submitted income information.⁴ CSSD denied his request for modification.⁵ Mr. C. appealed.⁶

B. Material Facts

Mr. C. was arrested in November of 2010 and is facing two felony charges.⁷ He is currently living in his father's cabin with a third party custodian ordered by the court. He does

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

⁵ Exhibit 5. The stated reason for the denial was that Mr. C. had not submitted income information. Exhibit 4, however, contains notarized affidavits as to his income, as well tax return information.

⁶ Exhibit 6.

⁷ These factual findings are based on Mr. C.'s testimony.

not have a job, and does not have transportation. Mr. C.'s last regular employment was in 2008 when he worked for a roofing company in Anchorage.

III. Discussion

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

Mr. C. asks that his support obligation be modified as of November 2010, when he was arrested. This request is logical, however, retroactive modifications are not permitted by law.¹² The earliest any modification may take effect is the first of the month after the parties were served with the notice that modification had been requested. In this case, any modification would take effect on March 1, 2011.

The best estimate of what Mr. C. is now able to earn would be based on his earning ability since January 1, 2011.¹³ He has been unemployed and because of the pending criminal charges his ability to work is limited. Neither CSSD nor Ms. L. asserts that Mr. C. is voluntarily and unreasonably unemployed or underemployed. Thus, for 2011 he has no wages for child support purposes.

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 Civil Rule 90.3(h)(2).

¹³ He did earn some money from his father in 2010, and received gifts or other payments during the year as well. This might all be counted as income for child support purposes if it were necessary to calculate Mr. C.'s earnings during 2010.

Mr. C. will likely be eligible for a 2011 Permanent Fund Dividend (PFD).¹⁴ He would not be eligible for a PFD if during 2010 he had been incarcerated based on a conviction for a felony or for some misdemeanors.¹⁵ It appears that the time he was in jail after his November arrest was prior to any conviction. Since he was not sentenced prior to January 1, 2011, he appears to be eligible for the 2011 PFD.¹⁶ Regardless of whether he is eligible, however, receipt of a PFD will not have any impact on his child support obligation because he has no other income.

IV. Conclusion

Despite Mr. C.'s inability to earn wages, he is still obligated to support his child. The minimum child support award allowed is \$50 per month.¹⁷ Mr. C.'s child support should be set at \$50 per month for one child.

V. Child Support Order

- Mr. C.'s ongoing child support is set at \$50 per month effective March 1, 2011.
- All other provisions of the June 11, 2009 Modified Administrative Child and Medical Support order remain in effect.

DATED this 22nd day of June, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

¹⁴ A PFD is considered income even if it is garnished to pay a debt of the recipient.

¹⁵ AS 43.23.005(d).

¹⁶ AS 43.23.005(g).

¹⁷ Civil Rule 90.3(c)(3).

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 11th 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.]