

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

In The Matter of:	)	
	)	OAH No. 11-0245-CSS
R J. H, JR.	)	CSSD No. 001137909
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor parent, D C. D, appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. H' case on June 2, 2011. The obligee children are A, D and E.

The formal hearing was held on July 12, 2011. Both parties appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, that portion of the Modified Administrative Child Support and Medical Support Order that added E to Mr. H' child support obligation is affirmed. However, the portion of the order that modified his child support obligation to \$429 per month is vacated. Mr. H' child support is modified to \$1,568 per month, effective April 1, 2011.

**II. Facts**

*A. Background*

Mr. H' child support obligation for A and D was set at \$1,283 per month in September 2005.<sup>1</sup> On December 28, 2010, Mr. H requested a modification review but he did not supply the income information CSSD needed to complete the review so the request for a review was denied.<sup>2</sup> CSSD apparently learned after the denial that the parties have a third child, E, so CSSD proceeded with a modification review in order to add E to Mr. H' support order. On March 7, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On June 2, 2011, issued a Modified Administrative Child Support and Medical Support Order that

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exhs. 2-4.  
<sup>3</sup> Exh. 5.

set Mr. H' modified ongoing child support amount at \$429 per month, based on the minimum wage.<sup>4</sup> Ms. D appealed, asserting Mr. H owns a four plex rental unit, for which he receives rent of \$1,100 per month, and that he did not document his self-employment income.<sup>5</sup>

*B. Material Facts*

The parties are married but separated in June 2010 and are currently facing divorce litigation. Ms. D lives out of state with the three children and Mr. H lives in Anchorage. Mr. H was formerly employed by the no name business but was suspended without pay in 2009 based on allegations of criminal behavior. He faces a trial in federal court in no month 2011.

Mr. H has supported himself since his suspension by living off the rental proceeds from a four plex he owns in East Anchorage. He used to own a three-bedroom home, but lost it to foreclosure. A friend of his who owns multiple properties in Anchorage purchased the home and allows Mr. H to live there rent-free. In exchange, Mr. H performs maintenance duties on his friend's rental properties.

Mr. H was not particularly forthcoming with his financial information. He stated he has not filed a federal income tax return since 2005, so those documents are not available. He submitted a list of his income and expenses from the rental units after the hearing. He claims monthly income from rent of \$4,300, plus \$120 per month from the coin operated laundry facility. He stated his expenses include \$1,727 for the mortgage payment; \$211 for a second mortgage; \$450 for natural gas; \$300 for water and wastewater; \$160 for electricity; and \$109 for trash pickup.<sup>6</sup> He also listed personal expenses of \$300 for a truck payment; \$214 for his cell phone bill (which includes phones for his daughters); \$75 for electricity; \$66 for Internet; and \$76 for cable.<sup>7</sup>

Mr. H did not provide any information regarding the value of living rent free in his former residence. He testified that he works 20 to 25 hours per month performing maintenance tasks in the properties owned by his friend. He said he would charge \$15 per hour for someone else if he were being paid for that same work. After the hearing, CSSD consulted online resources to determine the approximate rent Mr. H would pay in a home comparable to his.

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<sup>4</sup> Exh. 6.  
<sup>5</sup> Exh. 7.  
<sup>6</sup> Exh. 10 at pg. 1.  
<sup>7</sup> *Id.*

Another three bedroom, two bath single-family home in a residential area that appears comparable to the location of his former home would bring a rent payment of \$2,250 per month.<sup>8</sup> CSSD used this figure to attribute in-kind income to Mr. H of \$27,000 per year.<sup>9</sup>

CSSD also attributed self-employment income to Mr. H in the amount of \$29,784.<sup>10</sup> CSSD arrived at this figure by subtracting his two mortgage payments from his rental and laundry incomes, for total monthly income of \$2,482, which was then multiplied by twelve months to get the annual figure.<sup>11</sup> Post hearing brief at page 1, note 2.

CSSD added the total in kind income and self-employment income to reach a total income attributed to Mr. H of \$56,784 annually. CSSD inserted this total income figure into its child support calculator to reach a child support amount of \$1,562 per month.<sup>12</sup>

### **III. Discussion**

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>13</sup> Adding other children to a child support order is a material change in circumstances.<sup>14</sup> A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of April 1, 2011.<sup>15</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." The obligor has the burden of proving his or her earning capacity.<sup>16</sup>

Mr. H has not proven his actual income or income earning capacity. He provided scant testimony about his rental income, expenses and his in-kind income from receiving free rent at his former residence. CSSD made a respectable attempt to fashion an accurate child support amount from the figures it was provided, but Mr. H' information is just too tenuous.

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<sup>8</sup> Exh. 11 at pg. 3.

<sup>9</sup> \$2,250 x 12 = \$27,000.

<sup>10</sup> Exh. 12 at pg. 1.

<sup>11</sup> Post-Hearing Brief at pg. 1, n.2.

<sup>12</sup> Exh. 12.

<sup>13</sup> AS 25.27.190(e).

<sup>14</sup> See 15 AAC 125.321(b)(2)(B).

<sup>15</sup> 15 AAC 125.321(d). In this case, the notice was issued on March 7, 2011. Exh. 5.

<sup>16</sup> *Kowalski v. Kowalski*, 806 P.2d 1368, 1372 (Alaska 1991).

Self-employment income is generally reported in a federal income tax return and reflects actual figures the party receives and expends during the course of the prior calendar year. Mr. H has not documented any of his income or expenses, so his actual financial situation is a mystery. It is not enough to provide a list of figures when no documentation is available to supplement the list. He was directed to provide copies of his rental agreements in order to document the total amount of rent he receives but he refused, stating privacy considerations for his tenants. Yet he easily could have redacted the names of his tenants from the agreements and their identities would have remained confidential. Neither was Mr. H able to provide any information regarding the residence he lives in rent free. His estimate of the value of his maintenance work also was inadequate. Based on the lack of evidence in the record, it is determined that Mr. H' basic income for the purpose of calculating his child support obligation should remain as set in the 2005 order issued in his case. However, since this is a modification that is adding another child to his order, the original amount, set for two children, should be increased to the amount for three children.

Mr. H' child support was set at \$1,283 per month in 2005 for two children.<sup>17</sup> After taxes and other mandatory deductions, his total gross income of \$76,969.84 was reduced to \$57,019.96.<sup>18</sup> This net income figure should be multiplied times 33% for three children.<sup>19</sup> The result is \$18,816.58 per year, which, when divided by 12 months, equals \$1,568 per month. Mr. H' child support amount should be modified to this figure.

#### **IV. Conclusion**

Ms. D had the burden of proving that the Modified Administrative Child Support and Medical Support Order was issued in error. She met this burden. Mr. H, on the other hand, did not adequately prove his earning capacity. His youngest child should be added to his earlier support order and the amount should be increased to \$1,568 per month, which reflects the percentage for three children.

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<sup>17</sup> Exh. 1 at pg. 8.

<sup>18</sup> *Id.*

<sup>19</sup> Civil Rule 90.3(a)(2)(C).

**V. Child Support Order**

- Mr. H' child support is modified to \$1,568 per month for three children, effective April 1, 2011;
- All other provisions of the Administrative Child Support and Medical Support Order dated September 12, 2005, remain in full force and effect.

DATED this 29<sup>th</sup> 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 16<sup>th</sup> day of September, 2011.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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