

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

IN THE MATTER OF:	)	
	)	OAH No. 11-0260-CSS
E M. C	)	CSSD No. 001173317
_____	)	

**DECISION AND ORDER**

**I. Introduction**

E M. C appealed the denial by Child Support Services Division (CSSD) of her request to modify an existing child support order. The children subject to the existing order are D C, S C, and E C. These children are currently in the custody of the State of Alaska.

A hearing was held on July 19, 2011. Ms. C participated by telephone. CSSD was represented in person by Child Support Specialist Erinn Brian. At the close of the hearing, the record was left open for two weeks to give time for the submission of additional information. Ms. C provided additional information to CSSD, and CSSD has gathered that information and recalculated the amount it believes would be an appropriate child support obligation.

Based on the evidence in the record, Ms. C's child support obligation should be set at \$50 per month through December 31, 2011, and at \$590 per month effective January 1, 2012.

**II. Facts**

*A. Background*

CSSD issued an Administrative Child Support and Medical Support order on July 21, 2010 setting Ms. C's child support obligation at \$338 per month for three children.<sup>1</sup> Ms. C requested a modification of the prior order on March 9, 2011.<sup>2</sup> A Notice of Petition for Modification of Administrative Support Order was mailed by CSSD on March 16, 2011.<sup>3</sup> An indeterminate notice was issued by CSSD.<sup>4</sup> Ms. C filed a second request for modification on

---

<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 4. Apparently, CSSD failed to keep a copy of the notice actually sent. Exhibit 4 consists of a computer generated printout and a blank Request for Modification Review Decision form. It is not evident from Exhibit 4 how one would determine the contents of the notice that was actually sent.

June 14, 2011.<sup>5</sup> A second Notice of Petition for Modification of Administrative Support Order was mailed on June 24, 2011.<sup>6</sup> Ms. C appealed the denial of her first request for modification.<sup>7</sup>

*B. Material Facts*

In January of 2011, Ms. C began working for no name Construction as a laborer.<sup>8</sup> She earns \$12 per hour, and earned a total of \$10,809 through July 17, 2011.<sup>9</sup> This equates to \$21,618 per year.<sup>10</sup> In addition to a Permanent Fund Dividend payment,<sup>11</sup> she received dividends from her Native Corporation totaling \$1,764 in 2010.<sup>12</sup>

Ms. C's monthly expenses total \$1,163. This includes \$400 for food, \$400 for rent, \$300 for gasoline, \$5 for a telephone, and \$58 per month for car insurance.<sup>13</sup> With assistance from No Name Tribal Council, she is planning to move to a larger apartment so she will have room for her three children when they are returned to her.<sup>14</sup> Her rent will increase to \$696 per month when she moves. In addition, as part of the plan to reunite the family, she must undergo counseling at a cost of \$504 per month.<sup>15</sup> With the increased rent and the counseling costs, her monthly expenses total \$1,963, without including child support.

**III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>16</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." Child support orders may be modified upon a

---

<sup>5</sup> Exhibit 5.

<sup>6</sup> Exhibit 6.

<sup>7</sup> Exhibit 7.

<sup>8</sup> Testimony of Ms. C.

<sup>9</sup> Exhibit 10, page 10. This includes some overtime pay.

<sup>10</sup> She began work on January 27, 2011. Exhibit 9, page 1. Accordingly, she had worked for 25 weeks through July 17. \$10,809 divided by 25 weeks is \$432.36 per week. When that weekly amount is multiplied by 50 weeks per year, the resulting amount is \$21,618 per year (Ms. C is likely to have some unpaid vacation or sick leave during the course of the year).

<sup>11</sup> Although her PFD is garnished to pay child support arrears, it still counts as income. This payment reduces a debt that she would otherwise have to pay from some other source of income.

<sup>12</sup> Exhibit 10, page 2.

<sup>13</sup> Exhibit 10, page 3.

<sup>14</sup> According to her testimony, she anticipated moving August 1<sup>st</sup>, with the hope of having her children returned to her by the end of the month.

<sup>15</sup> Exhibit 10, page 5; Exhibit 11.

<sup>16</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

showing of “good cause and material change in circumstances.”<sup>17</sup> 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.<sup>18</sup> Finally, the person appealing CSSD’s decision has the burden of demonstrating that the decision is incorrect.<sup>19</sup>

Child support awards are generally based on the amount of money the obligor is expected to earn.<sup>20</sup> Based on Ms. C’s current income, her child support obligation would be \$357 per month for one child, \$482 per month for two children, and \$590 per month for three children.<sup>21</sup>

As discussed above, however, Ms. C’s monthly expenses exceed her monthly income. She does not appear to have extravagant expenses, and there is little she can do to decrease them. She is working and appears to be doing all she can reasonably do to support herself and prepare for the return of her children. The child support obligation may be varied from the amount calculated by the formula in Civil Rule 90.3(a) when there is clear and convincing evidence that manifest injustice would result if the support award was not varied.<sup>22</sup>

Ms. C did not testify in great detail about her past, the reasons why her children were removed from her home, or her efforts to straighten out her life and re-unite her family. The testimony she did provide, however, was passionate, clear, and convincing. She has a plan to get back on her feet, and she is committed to making it work. Her payroll records show consistent work attendance.<sup>23</sup> Letters from Ascent Treatment and Counseling and from Alaska Family Services show that she has been attending and making progress with her required counseling.<sup>24</sup> Another relevant factor unique to this case is that any reduction would be for a limited period of

---

17 AS 25.27.190(e).  
18 15 AAC 125.321(d).  
19 15 AAC 05.030(h).  
20 Civil Rule 90.3(a)(2) & Civil Rule 90.3, Commentary III.E.  
21 Attachment A.  
22 Civil Rule 90.3(c)(1).  
23 Exhibit 9.  
24 Exhibit 11.

time. Her mandatory counseling will end sometime this year.<sup>25</sup> In addition, if her children are returned to the home, the support obligation would be suspended.

Having to pay \$540 per month in child support on top of her other expenses would create a severe impediment to her efforts towards re-uniting her family. CSSD has agreed that a finding of manifest injustice could be made in this case. The evidence in the record does establish by clear and convincing evidence that manifest injustice would result if the child support obligation is not varied.

Although reduced, the child support obligation is not eliminated. The minimum child support award allowed is \$50 per month.<sup>26</sup> Because this variation is for only 9 months, this minimum amount is the award that will be imposed.

#### **IV. Conclusion**

Based on clear and convincing evidence, manifest injustice would result if the child support award calculated pursuant to Civil Rule 90.3(a) is not varied through the remainder of this calendar year. Ms. C's child support should be set at \$50 per month for three children through December 31, 2011, and effective January 1, 2012 should be set at \$357 per month for one child, \$482 per month for two children, and \$590 per month for three children.

#### **V. Child Support Order**

- Ms. C's child support obligation is set at \$50 per month effective April 1, 2011 through December 31, 2011.
- Ms. C's ongoing child support obligation is set at \$590 per month for three children effective January 1, 2012.
- All other provisions of the July 21, 2011 Administrative Child Support and Medical Support order remain in effect.

DATED this 4<sup>th</sup> day of August, 2011.

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

---

<sup>25</sup> Although Ms. C may benefit from continued counseling after the mandatory counseling ends, the cost of continued counseling should be lower.

<sup>26</sup> 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 22<sup>nd</sup> day of August, 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.]