

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

IN THE MATTER OF:)
)
 E R. W) OAH No. 11-0268-CSS
) CSSD No. 001060787
_____)

DECISION AND ORDER

I. Introduction

The custodian of record, J M. D, appeals a decision to modify an Administrative Child Support and Medical Support Order. The obligor parent is E W. The children in this case are E D and J D.

A hearing was held on July 25, 2011. Mr. W appeared by telephone. Ms. D appeared in person. Child Support Services Division (CSSD) was represented by Child Support Specialist Erinn Brian who also appeared in person. Based on the evidence in the record, Mr. W' child support obligation should be set at \$307 per month for two children.

II. Facts

A. Background

A Modified Administrative Child Support and Medical Support Order was issued in 2008 setting Mr. W' support obligation at \$487 per month for two children.¹ CSSD received a request for modification on April 1, 2011.² A Notice of Petition for Modification of Administrative Support Order was mailed to each parent on April 13, 2011.³ A Modified Administrative Child Support and Medical Support Order was issued by CSSD on June 8, 2011.⁴ This order set Mr. W' ongoing support obligation at \$140 per month. Ms. D appealed that modification.⁵

B. Material Facts

Mr. W previously worked for No Name business.⁶ He earned approximately \$30,000 per year in that position during 2008 and 2009.⁷ He was terminated from that position in early 2010,

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

⁵ Exhibit 5.

⁶ Unless otherwise noted, the factual findings are based on Mr. W' testimony.

and has been receiving unemployment benefits since that date.⁸ Mr. W has applied for other work, and he has had job interviews but no employment offers. In order to continue receiving unemployment benefits, he has had to submit information to the State concerning his job search efforts. Mr. W also testified that he has a prior felony conviction that he believes interferes with his ability to obtain a job.

Mr. W' unemployment benefits are \$330 per week,⁹ and will continue through the remainder of this year. Thus, he can be expected to receive a total of \$17,160 for the year.¹⁰ Mr. W is also eligible to receive a Permanent Fund Dividend each year.

Mr. W has two other children who are living with him, N and X. N is older than both of the children in this case. X is older than J, but younger than E.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹¹ 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."¹² 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.¹³ The person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁴

Ms. D raised three issues on appeal. First, she believes that Mr. W is capable of obtaining a job that would pay more than his unemployment benefits. He was able to pay a higher child support amount in the past, and could, in her view, continue to pay a higher amount.

7 Exhibit 6.

8 Exhibit 6; Testimony of Mr. W.

9 Exhibit 6.

10 A portion of each weekly check is withheld to pay child support and taxes.

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

12 AS 25.27.190(e).

13 15 AAC 125.321(d).

14 15 AAC 05.030(h).

Unemployment is generally considered a temporary condition, and is not usually a basis for reducing a child support obligation. In this case, however, Mr. W' unemployment has lasted approximately 18 months, and seems likely to continue. This is not a temporary reduction in income due to a short period of unemployment.¹⁵

On the other hand, if Mr. W' continued unemployment or underemployment was both voluntary and unreasonable, it would be appropriate to impute income to him and calculate ongoing support based on the imputed income.¹⁶ Because Ms. D is the party appealing CSSD's determination, she has the burden of proving that Mr. W' unemployment is voluntary and unreasonable. Ms. D's concerns are valid, as most people in Anchorage are able to find at least part time work if they are diligent in their job search efforts. Given Mr. W' testimony that he has conducted some job search efforts, and the lack of direct evidence that jobs are or have been made available to him, Ms. D has not proven that it is more likely true than not true that Mr. W is voluntarily and unreasonably unemployed.¹⁷

The next issue raised on appeal was that Mr. W had refused contact with his children. This is not a matter that can be addressed in a child support hearing before the Office of Administrative Hearings. Finally, she noted that she had been paying all medical expenses, and requested assistance with collecting reimbursement from Mr. W for his share of those expenses. The applicable order in this case states:

1. Reasonable health care expenses not covered by insurance that are less than \$5,000 shall be paid equally by both parties unless good cause is shown.
2. A party shall reimburse the other party for his or her share of uncovered expenses within 30 days after receiving the health care bill, proof of payment, and, if applicable, a health insurance statement showing what part of the cost is uncovered.^[18]

Ms. D now has Mr. W' mailing address and can mail the required documents to him showing the amount of medical expenses he is responsible for. He is obligated by the existing

¹⁵ See Civil Rule 90.3, Commentary X.A. (temporary reductions in income do not justify ongoing modification of child support).

¹⁶ 15 AAC 125.060(a); Civil Rule 90.3, Commentary III.C.

¹⁷ In this case, CSSD did not find Mr. W to be voluntarily and unreasonably unemployed. If CSSD had determined he was voluntarily and unreasonably unemployed, and had Mr. W appealed that determination, the evidence he presented might not have been sufficient to meet his burden of proving that CSSD's determination was incorrect.

¹⁸ Exhibit 1, page 2; Exhibit 4, page 3.

medical support order to pay his share of the medical costs.¹⁹ This obligation is a *medical support* obligation, however, and it is not a basis for adjusting the amount of ongoing child support.

Finally, although not raised by Ms. D in her appeal, there was a plain error in CSSD’s calculation of the ongoing support obligation. CSSD used approximately six months of unemployment benefits as Mr. W’ expected annual income for the year.²⁰ Mr. W’ unemployment benefits should have been extrapolated over the entire year to obtain his expected annual income. Accordingly, it is necessary to recalculate Mr. W’ ongoing support obligation.

Calculating the support obligation is complicated in this case because of the ages of the children in Mr. W’ custody relative to the ages of the children in this case. Those ages can be seen in the following chart:²¹

Relationship A Children of this CSSD case		Relationship B Children in obligor’s custody	
Child	Age	Child	Age
		N	16
E	14		
		X	12
J	10		

In calculating the support obligation for each child in this case, Mr. W is entitled to a deduction from his income for children from a prior relationship that he is supporting,²² but is not entitled to a deduction for children from a subsequent relationship.²³ Thus, in calculating the support obligation for E, Mr. W receives a prior child deduction for N, but not for X. In calculating the support obligation for J, Mr. W receives a deduction for both X and N.²⁴ Accomplishing this

¹⁹ 15 AAC 125.431(a) provides that CSSD will collect unpaid medical expenses only after the amount has been reduced to judgment. Subsection (b) of this regulation allows an offset against arrears for unpaid medical bills, but does not allow an addition to those arrears for unpaid medical bills.

²⁰ Exhibit 4, page 4.

²¹ The ages in the chart have been changed to help protect the parties’ privacy, but the relative birth order between children remains the same.

²² Civil Rule 90.3(a)(1)(D).

²³ Civil Rule 90.3, Commentary III.D.

²⁴ As to E, only N is an older child from a prior relationship. As to J, both N and X are older children from a prior relationship. As to X, only E is an older child of a prior relationship.

requires a multi-step process.²⁵ All of the calculations start with the estimated annual income of \$17,160 from unemployment benefits plus one Permanent Fund Dividend.

The first step is the calculation of the amount Mr. W would be required to pay in child support for N.²⁶ This results in a support obligation of \$292 per month.²⁷

The second step is calculating the support obligation for E, the oldest child in this case (Relationship A). The same annual income is used, but Mr. W receives a deduction of \$292 per month for supporting N. This results in a child support obligation for E in the amount of \$233 per month.²⁸

The third step is calculating the support obligation for X. In this calculation, Mr. W gets a deduction for supporting E, from Relationship A, but no deduction for supporting N, who is the oldest child of Relationship B. Because X is the second child of Relationship B, the additional child support for X is 7% of the adjusted annual income.²⁹ Mr. W' adjusted annual income at this step is \$14,706.36.³⁰ Seven percent of that amount is \$1,239.45 per year, or \$103 per month.

The fourth step is calculating the support for J. In this step, Mr. W receives a deduction for supporting both N and X who are older children from Relationship B. Because J is the second child of Relationship A, the support obligation is 7% of the adjusted income. Mr. W' adjusted income at this step is \$12,762.36.³¹ Seven percent of this amount is \$893.37 or \$74 per month.

Finally, Mr. W' child support obligation in this case, for two children, is the amount he owes for E plus the amount owed for J, or \$307 per month.

IV. Conclusion

Ms. D has not met her burden of proof on the issue of whether Mr. W is voluntarily and unreasonably unemployed. There was, however, plain error in CSSD's calculation for the

²⁵ See *In re K.L.H.* OAH NO. 09-0112-CSS (Dept of Revenue 2009), page 4. *K.L.H.* also describes how to calculate child support where some but not all of the children from a prior relationship are older than the children subject to the child support order at issue in the case being decided.

²⁶ Civil Rule 90.3(a)(1)(D).

²⁷ Attachment A. This decision relies on CSSD's online child support calculator available at CSSD's web site. Attachments A – D are printouts from that calculator.

²⁸ Attachment B.

²⁹ Civil Rule 90.3(a)(2). As shown in this rule, child support is based on 20% of the obligor's adjusted income for one child and 27% for two children. The support for the second child is an additional 7% of adjusted income.

³⁰ Attachment C.

³¹ Attachment D.

modified support order. Based on the correct calculation described above, Mr. W' child support obligation is set at \$307 per month for two children.

V. Child Support Order

- Mr. W' ongoing child support obligation is set at \$307 per month effective May 1, 2011.
- All other provisions of the June 8, 2011 Modified Administrative Child Support and

Medical Support order remain in effect.

DATED this 27th day of July, 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 15th 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.]