

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

| | | |
|-------------------|---|---------------------|
| IN THE MATTER OF: |) | |
| |) | OAH No. 11-0269-CSS |
| T F. R |) | CSSD No. 001117831 |
| _____ |) | |

DECISION AND ORDER

I. Introduction

The obligor, T R. R, appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 20, 2011. The obligee child is D, age 9. The custodian is C K. P.

The formal hearing was held on October 5, 2011. Both parties participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. R' child support is modified to \$1,025 per month, effective June 1, 2011. His support is not modified for May 2011 because the calculation does not reach the 15% threshold that month. Mr. R was still entitled to a deduction for paying support for a prior child in May 2011. That child reached the age of 18 years and had graduated from high school as of the end of May 2011, so the modified figure will begin as of June 2011.

II. Facts

A. History

Mr. R' child support obligation for D was set at \$759 per month in 2006.¹ Ms. P filed a petition for modification on April 13, 2011.² On April 20, 2011, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. R did not provide income information.⁴ On June 20, 2011, CSSD issued a Modified Administrative Child Support

1 Exh. 1.
2 Exh. 2.
3 Exh. 3.
4 Pre-Hearing Brief at pg. 1.

and Medical Support Order that modified Mr. R' child support order to \$1,129 per month, effective May 1, 2011.⁵ He appealed on July 14, 2011.⁶

B. Material Facts

Mr. R and Ms. P are the parents of D, who is 9 years of age. D lives with the custodian; Mr. R lives and works in Virginia.

Mr. R is retired from the military and he is also employed as an armed security guard. Following several exchanges of information, Mr. R agrees with CSSD's estimate that his 2011 income from all sources likely will total \$92,447.33, which consists of his earnings from employment and his military retirement.⁷

Mr. R has a prior child named C and has been paying support for the child in the amount of \$795 per month.⁸ Mr. R is entitled to a deduction in that amount from income, but it is applicable only for the month of May 2011. This is because C reached the age of 18 in March 2011 but was still in high school through May 2011.⁹ Since this modification is effective in May 2011, Mr. R is entitled to the deduction for one month, then, as of June 2011, his modified ongoing child support should be calculated without that deduction.

Mr. R pays state income tax in Virginia, so he is also entitled to a deduction for the state tax he pays there. He provided a formula for calculating that deduction,¹⁰ and when this formula is applied to the income figure CSSD estimated he would earn in 2011, the monthly deduction is \$421.52.¹¹

Mr. R makes voluntary payments into a retirement account. In 2011, his account balance was \$2,571.83.¹² As of October 19, 2011, his balance had reached \$7,278.82, an increase of \$4,706.99. Dividing this number by 12 yields an average monthly contribution of \$392.25 per month.

⁵ Exh. 4.

⁶ Exh. 5.

⁷ Exh. 17 at pg. 1; Exh. 19 at pg. 2.

⁸ Exh. 10 at pg. 3.

⁹ Exh. 10 at pg. 2.

¹⁰ Exh. 16 at pg. 4. The formula states that if the amount of taxable income is over \$17,000, the Virginia tax withholding should be \$720 plus 5.75% of the income in excess of \$17,000.

¹¹ When the formula is applied to Mr. R' income, his Virginia tax withholding is $720 + .0575 \times (\$92,447.33 - \$17,000)$. The result is \$5,058.22, which equals \$421.52 per month.

¹² Exh. 16 at pg. 2.

Inserting Mr. R' estimated 2011 income and the deductions set forth in this section into CSSD's child support calculator results in a child support amount of \$866 per month for May 2011, and \$1,025 per month as of June 2011 and ongoing. The figure for May 2011 does not constitute a 15% increase from Mr. R' previous amount of \$759 per month,¹³ but the amount calculated for June 2011 and ongoing does meet the 15% threshold.

III. Discussion

Mr. R has appealed CSSD's calculation of his modified child support obligation. He has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.¹⁴ A modification typically becomes effective the month after the parties are served with notice that a modification has been requested, which in this case would be May 1, 2011.¹⁵ A modification may become effective later than the first available month, however, due to the application of other provisions of Alaska's child support law. That has occurred in this case, as is discussed below.

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁶ 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 newly calculated support amount does not reach the 15% threshold, CSSD may, but is not required, to modify the child support amount.

It is undisputed that the figure CSSD adopted for the modification order, \$1,129 per month, is incorrect. Mr. R is entitled to additional deductions that were not calculated into CSSD's determination, so the formal hearing process focused on reaching the correct modified child support amount. There is also no dispute that Mr. R is entitled to a deduction from income for supporting his prior child of \$795 per month, but only for May 2011, as his prior child had emancipated and graduated from high school by the end of that month.

A. Virginia State taxes

¹³ \$759 x 1.15 = \$872.85

¹⁴ 15 AAC 05.030(h).

¹⁵ 15 AAC 125.321(d). In this case, the notice was issued on April 20, 2011. Exh. 3.

¹⁶ AS 25.27.190(e).

Mr. R agreed with CSSD's final estimation of his annual income, but objected to CSSD's determination of the deduction he is entitled to for paying state taxes in Virginia and also the monthly deduction amount for his retirement. Mr. R' argument regarding the Virginia state tax is correct. The formula he provided at Exhibit 16, page 4, is straightforward and easily computed. It results in a monthly deduction of \$421.52.¹⁷ CSSD's estimate, \$299.59 per month, was calculated from his 2010 income figure and is no longer accurate.¹⁸

B. Retirement deduction

CSSD determined that Mr. R' monthly retirement deduction should be \$304.75 per month.¹⁹ That figure was accurate as of the date of CSSD's Submission to Record, but Mr. R submitted documentation that he made an additional contribution to his retirement account on October 19, 2011.²⁰ Thus, the IRA contributions he documented for 2011 total \$4,706.99, or, \$392.25 per month.²¹ Mr. R requested a deduction based on total annual contributions of \$5,000, which would be \$416.67 per month, but he had not yet reached that total contribution amount and is thus not entitled to it. In any event, he came very close to that total, so the difference between the deduction he is receiving and the one he requested is only about \$25 per month, which would have a negligible effect on his child support calculation.

C. Federal income taxes

Finally, Mr. R disagreed with the federal income tax figures CSSD used in his calculation and requested that the formula the agency used be supplied to him, apparently so that he could verify its accuracy. That request cannot be met, as in this case CSSD's computer system must calculate the tax applicable to his income figures. The computer program does allow a tax figure to be entered into the calculation manually, but only if the amount is derived from an actual tax return. Mr. R' support obligation is based on an estimation of his 2011 income, not on his 2010 tax return, so the tax liability reflected on that return is irrelevant to the 2011 calculation. In any event, the computer inserts the tax figure that a single filer would pay, which is the highest tax amount calculated.

17 *See* n. 10-11.

18 *See* Exh. 17 at pg. 2.

19 Exh. 17 at pg. 2.

20 Mr. R' documents were received on October 20, 2011.

21 $\$4,706.99 \div 12 = \392.25 .

Inserting Mr. R' estimated 2011 income and the deductions to which he is entitled into CSSD's online child support calculator²² results in a child support amount of \$866 per month for May 2011.²³ This figure does not constitute a 15% increase from Mr. R' previous amount of \$759 per month, so his child support should not be modified for May 2011.

When the prior child deduction is removed as of June 1, 2011, Mr. R' income and deductions yield a modified support amount of \$1,025 per month.²⁴ This figure does meet the 15% threshold, so as a result, Mr. R' child support should be modified to that amount as of June 1, 2011.

IV. Conclusion

Mr. R met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). The calculation has been corrected so Mr. R' child support should be modified to \$1,025 per month, effective June 1, 2011, and ongoing.

V. Child Support Order

- Mr. R' child support for D is modified to \$1,025 per month, effective June 1, 2011, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated June 20, 2011, remain in full force and effect.

DATED this 29th day of October, 2011.

By: Signed _____
Kay L. Howard
Administrative Law Judge

²² <http://www.childsupport.alaska.gov/default.asp>. The link to the calculator is on the right-hand side of the

page.

²³ Attachment A.

²⁴ Attachment B.

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 29th day of November, 2011.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

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