

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

IN THE MATTER OF:)
)
 C L) OAH No. 11-0278-CSS
) CSSD No. 001166654
_____)

DECISION AND ORDER

I. Introduction

C L has appealed the Child Support Services Division (CSSD) denial of her request to modify an existing child support order. The children in this case are M S and Z S, both of whom are in state custody. A hearing was held on August 4, 2011. Ms. L appeared by telephone. CSSD was represented by Child Support Specialist Erinn Brian, who appeared in person.

Based on the evidence in the record, Ms. L's child support obligation should be set at \$50 per month.

II. Facts

A. Background

An Administrative Child Support and Medical Support Order was issued on February 3, 2010, setting Ms. L's child support obligation at \$281 per month for two children.¹ Ms. L requested a modification of that order on April 20, 2011.² A Notice of Petition for Modification of Administrative Support Order was mailed on May 11, 2011.³ Ms. L's modification request was denied because she had not submitted income information.⁴ Ms. L appealed the denial on July 8, 2011.⁵

B. Material Facts

Ms. L is currently unemployed.⁶ She worked for two or three months as a cleaner at the No Name Hotel in the summer of 2010, but was fired. In 2010, Ms. L earned a total of \$473.⁷

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

⁵ Exhibit 5.

⁶ The factual findings are based on Ms. L's testimony unless otherwise indicated.

⁷ Exhibit 7.

In 2009, she only earned \$582.⁸ She has an 8th grade education, and suffers anxiety from Post Traumatic Stress Disorder and also has severe Attention Deficit Hyperactivity Disorder. She filed for Social Security Disability, but missed a deadline and has had to start that process over. Her husband is on Social Security Disability, and the family relies on his benefits plus assistance from their church for living expenses.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁹ 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."¹⁰ 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.¹¹ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹²

Ms. L's current child support obligation is based on imputed income to her at the Alaska Minimum Wage for 2080 hours per year.¹³ Child support obligations should be computed based on the best available information as to the parent's expected annual income.¹⁴ Department of Revenue regulations list the type of information that should be considered when making that computation.¹⁵ When none of that information is available, the calculation for parents living in Alaska must be based on the Male and Female Average Annual Wage Income by Age Group statistics.¹⁶

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Id.

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

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AS 25.27.190(e).

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15 AAC 125.321(d).

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15 AAC 05.030(h).

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Exhibit 1, pages 4 & 8.

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15 AAC 125.050(c).

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15 AAC 125.050(c)(1) – (9).

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15.AAC 125.050(d)(1).

In Ms. L's case, some information is available. She currently is not earning any income.¹⁷ Her education and work history¹⁸ suggest that any job she obtains will not be highly paid, and her psychological diagnosis indicate that she will have trouble obtaining and keeping a job.¹⁹ If she does obtain a job, it is more likely to be part time rather than full time. Ms. L has established that her child support obligation should be modified. Her support obligation should be based on her expected income. That obligation will be effective June 1, 2011 because support cannot be modified retroactively to before the month in which the Notice of Petition for Modification of Administrative Support Order was served.²⁰

IV. Conclusion

Ms. L's child support obligation should be based on her expected income, which at this time is zero. Accordingly, her child support obligation should be set at the minimum allowable amount of \$50 per month for two children.²¹

V. Child Support Order

- Ms. L's child support obligation is set at \$50 per month effective June 1, 2011.
- All other provisions of the February 3, 2010 Administrative Child Support and Medical Support order remain in effect.

DATED this 16th day of August, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

¹⁷ 15 AAC 125.050(c)(1).

¹⁸ 15 AAC 125.050(c)(5).

¹⁹ 15 AAC 125.050(c)(9).

²⁰ Civil rule 90.3(h)(2).

²¹ 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 2nd day of September, 2011.

By: Signed _____
Signature
Christopher Kennedy _____
Name
Administrative Law Judge _____
Title

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