

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

IN THE MATTER OF:)
)
 K J) OAH No. 11-0300-CSS
) CSSD No. 001120921
_____)

DECISION AND ORDER

I. Introduction

The obligor parent, K J, has disputed the denial of his request to modify his child support obligation. S G is the custodian of record. The obligee child is J J.

A hearing was held on August 29, 2011. Mr. J appeared in person as did Child Support Specialist A.J. Rawls, representing the Child Support Services Division (CSSD). Ms. G appeared by telephone.

Based on the evidence in the record, Mr. J's child support obligation should be modified and set at \$370 per month.

II. Facts

A. Background

An Amended Administrative Child and Medical Support Order dated July 6, 2004 set Mr. J's child support obligation at \$492 per month.¹ Mr. J requested a modification of that support obligation on April 18, 2011.² Notice of Petition for Modification of Administrative Support Order was mailed on April 27, 2011.³ CSSD determined that there had not been a significant change of circumstance and denied Mr. J's modification request.⁴ Mr. J appealed that decision.⁵

B. Material Facts

Mr. J works full time for no name business as a receiving supervisor.⁶ He earns \$13 per hour. He previously had a second job with the no name business of Anchorage, but left that

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 5.

⁵ Exhibit 6.

⁶ Factual findings are based on Mr. J's testimony unless otherwise noted.

employment during the early part of 2011. He contributes \$200 per month to a 401k retirement plan.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.⁷ 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."⁸ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "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.⁹ Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹⁰

Child support is usually calculated as a percentage of the obligor parent's income.¹¹ The obligation should be based on an estimate of what the parent will actually earn when the support obligation is due.¹² In this case, that means estimating the amount Mr. J will earn on an annual basis beginning on May 1, 2011 when any modification would become effective.

At \$13 per hour, Mr. J can expect to earn gross wages of \$27,040.¹³ In addition, he will receive one Permanent Fund Dividend, bringing his total estimated annual income to \$28,321. Mr. J had previously worked two jobs, but it is not unreasonable for him to wish to only work 40 hours per week. Mr. J does contribute to a 401k plan, and he is entitled to a credit for his contributions, limited to 7.5% of his gross wages,¹⁴ or \$169 per month.¹⁵ When this information is inserted into CSSD's online child support calculator, the resulting child support obligation is

⁷ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

⁸ AS 25.27.190(e).

⁹ 15 AAC 125.321(d).

¹⁰ 15 AAC 05.030(h).

¹¹ Civil Rule 90.3(a)(2).

¹² Civil Rule 90.3, Commentary III.E.

¹³ \$13 per hour x 40 hours per week x 52 weeks per year.

¹⁴ Civil Rule 90.3(a)(1)(B).

¹⁵ \$27,040 x 7.5% = \$2,028 per year, or \$169 per month.

\$370 per month.¹⁶ Because this is more than 15% less than Mr. J's current support obligation, he has shown that CSSD's decision not to modify his support obligation was incorrect.

Mr. J may also be entitled to credit for providing medical insurance. Because medical insurance amounts change regularly, he should work with his caseworker to establish the amount of this credit. Mr. J also raised other concerns about arrears and direct payments made to Ms. G. The present action can only address modification, and modifications cannot be retroactive. Mr. J's caseworker with CSSD may be able to assist him with these other issues.

IV. Conclusion

Mr. J has met his burden of proving that CSSD's denial of his request for modification was in error. His child support obligation should be set at \$370 per month for one child.

V. Child Support Order

- Mr. J's ongoing child support obligation is set at \$370 per month, effective May 1, 2011.
- All other provisions of the July 6, 2002 Amended Administrative Child and Medical

Support order remain in effect.

DATED this 9th day of September, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

¹⁶ Attachment A.

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 26th day of September, 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.]