

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

IN THE MATTER OF:	)	
	)	OAH No. 11-0331-CSS
A O	)	CSSD No. 001097198
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, A O, appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The custodian of record is F C, and the children in this matter are J O and C M.

A hearing was held on September 15, 2011. Mr. O appeared by telephone and CSSD was represented in person by Child Support Specialist Erinn Brian. Ms. C did not appear. A supplemental hearing was held on September 27, 2011. Mr. O and Ms. C both appeared by telephone and CSSD was represented by Child Support Specialist Andrew Rawls. Based on the evidence in the record, CSSD's decision to modify Mr. O's child support obligation and set that obligation at \$50 per month is upheld.

**II. Facts**

*A. Background*

A Decision and Order dated November 13, 2009 set Mr. O's child support obligation at \$386 per month for two children.<sup>1</sup> Mr. O's request for modification was received by CSSD on June 14, 2011.<sup>2</sup> Notice of petition for Modification of Administrative Support Order was mailed to the parties on June 23, 2011.<sup>3</sup> A Modified Administrative Child Support and Medical Support Order was issued on August 8, 2011, setting ongoing child support at \$50 per month.<sup>4</sup> Mr. O

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<sup>1</sup> Exhibit 1.  
<sup>2</sup> Exhibit 2.  
<sup>3</sup> Exhibit 3.  
<sup>4</sup> Exhibit 4.

appealed, noting that he had been incarcerated since July 7, 2010, and that the 2009 order ruled on some of his arrears but that CSSD had not acted in conformity with that order.<sup>5</sup>

*B. Material Facts*

There are no material facts in dispute. Mr. O has been in jail since July 7, 2010,<sup>6</sup> thereby limiting his ability to work.

**III. Discussion**

A parent is obligated both by statute and at common law to support his or her children.<sup>7</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 showing of "good cause and material change in circumstances."<sup>8</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>9</sup> The minimum child support award is \$50 per month.<sup>10</sup>

Mr. O does not dispute CSSD's decision that his child support obligation should be reduced to \$50 per month. Instead, he disputes the effective date of that reduction. In addition, he raised a question as to whether the 2009 Decision and Order had been complied with.

Retroactive modifications are not allowed.<sup>11</sup> Modifications may take effect the month after notice of the request for modification has been served on the opposing party.<sup>12</sup> CSSD did not serve any notice on the custodial parent until after it received Exhibit 2, which is Mr. O's request for modification. Mr. O testified that he had sent in several earlier requests on different forms. CSSD had sent notices regarding withholding and a notice regarding the proposed suspension of his driver license. Mr. O testified that he responded to each of those, notifying

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<sup>5</sup> Exhibit 5.  
<sup>6</sup> Testimony of Mr. O.  
<sup>7</sup> *Mathews v. Mathews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.  
<sup>8</sup> AS 25.27.190(e).  
<sup>9</sup> 15 AAC 125.321(d).  
<sup>10</sup> Civil Rule 90.3(c)(3).  
<sup>11</sup> Civil Rule 90.3(h)(2).  
<sup>12</sup> Civil Rule 90.3(h)(2).

CSSD that he was in jail and could not pay his child support obligation. He said that he finally received the correct form from CSSD in June of 2011, and that he promptly filed his request at that time.

During the hearing, CSSD was directed to review all of its records and to file a copy of any document received from Mr. O to determine if any of his statements could be treated as a request for modification. After the hearing, CSSD submitted additional written requests from Mr. O. On October 26, 2010, Mr. O stated his objection to a Notice of Withholding:

I have no income. I am incarcerated and have made almost nothing in the last year. I would like an administrative review because it is too much. I am making no income now and would like payment to be reduced.<sup>[13]</sup>

In requesting a review of CSSD's intent to suspend his driver license, Mr. O stated:

I am in jail and I request an administrative review to lower how much I owe to \$50.00 a month. I have been in since July 2010.<sup>[14]</sup>

On May 27, in objecting to a Notice of Property Withholding, Mr. O stated:

I request an administrative review to lower monthly amount I owe. I have been in jail since July 7, 2010, and would like that to be reflected in review. Please help on this matter. I just can't pay right now.<sup>[15]</sup>

In June, Mr. O submitted a request for modification using the correct form,<sup>16</sup> and CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>17</sup>

CSSD could have exercised its discretion to treat any one of these requests as a request to modify the ongoing child support obligation. Had it done so, the custodial parent, Ms. C, would have been notified of Mr. O's request. Unfortunately, CSSD did not send any notice to Ms. C and there is nothing in the record to indicate that she had notice of Mr. O's requests prior to June of 2011. The earliest date the modification can become effective is July 1, 2011, the first day of the month after the non-moving party was given notice of the requested change.<sup>18</sup>

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13 Exhibit 8.

14 Exhibit 9.

15 Exhibit 10.

16 Exhibit 2.

17 Exhibit 3.

18 15 AAC 125.321(d); Civil Rule 90.3(h)(2).

The second issue raised by Mr. O involves his arrears. In 2008, Mr. O had been subject to a child support order obligating him to pay \$50 per month.<sup>19</sup> CSSD issued a modified order increasing his child support obligation to \$620 per month for 2008 and \$386 per month for 2009 for two children. Mr. O appealed that increase, and ultimately a formal hearing was held. The final decision determined that Mr. O's ongoing child support obligation should be set at \$386 per month, but that the modification would not be effective until November 1, 2009. This had the effect of keeping his prior support obligation at \$50 per month through all of 2008 and most of 2009, and reduced the amount of accrued arrears that had been based on the higher child support obligation.

Mr. O asserted at the first hearing date that CSSD had not reduced the arrears as directed in the 2009 Decision and Order. CSSD investigated this assertion, and at the supplemental hearing agreed that Mr. O was correct. An accounting statement has been submitted showing that an adjustment was made on September 16, 2011. While this appeal is technically limited to only the modification issue, it does appear that CSSD has corrected its earlier mistake.

#### **IV. Conclusion**

Child support obligations cannot be modified retroactively. Because the custodial parent was not notified of Mr. O's request prior to June of 2011, the modification of his child support obligation is effective on July 1, 2011. Mr. O's modified child support obligation is set at \$50 per month for two children.

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

The Modified Administrative Child Support and Medical Support order issued by CSSD is upheld and remains in effect.

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

By: Signed  
Jeffrey A. Friedman  
Administrative Law Judge

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<sup>19</sup> The information about the prior child support proceedings is taken from Exhibit 1, *In re A.O.*, OAH NO. 09-0334-CSS (Dept of Revenue 2009).

**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 24<sup>th</sup> day of October, 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.]