

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

IN THE MATTER OF:)

D T. W)

OAH No. 11-0361-CSS

CSSD No. 001145126

DECISION AND ORDER

I. Introduction

The obligor, D T. W, appealed a Decision on Request for Modification Review that the Child Support Services Division (CSSD) issued in his case on August 22, 2011. The obligee child is L, 10. The other party is H J. G.

The hearing was held on October 6, 2011. Mr. W appeared by telephone; Ms. G did not participate.¹ Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, CSSD's Decision on Request for Modification Review is vacated and Mr. W's child support obligation is modified to \$524 per month for one child, effective June 1, 2011.

II. Facts

A. Background

Mr. W's child support obligation was set at \$660 per month for one child in June 2008.² Mr. W requested a modification review on December 6, 2010.³ His request stated he had moved out of Alaska permanently, so CSSD sent it to Maryland, the state where Ms. G resides.⁴ CSSD and Maryland's child support agency exchanged documents and communicated several times in the next few months, but Mr. W's support obligation was not modified by Maryland.⁵ On May 25, 2011, Mr. W contacted CSSD and requested that the modification be done in Alaska because

¹ An attempt to contact Ms. G to participate in the hearing by telephone was unsuccessful. The undersigned left her a voicemail message but she has not returned the call.

² Exh. 1.

³ Exh. 2.

⁴ See Pre-hearing Brief at pgs. 1-2.

⁵ *Id.*

he was still an Alaska resident.⁶ On May 31, 2011, CSSD issued a notice to both parties that a modification review had been requested.⁷ Mr. W provided income information.⁸ On August 22, 2011, CSSD issued a Decision on Request for Modification Review for the reason that there had been “no significant change in circumstance[s].”⁹ Mr. W appealed on September 15, 2011.¹⁰

B. Material Facts

Mr. W currently works for Federal Express. In 2010, his income was \$55,139.¹¹ After the formal hearing, CSSD estimated his 2011 income at \$55,645.20.¹² To arrive at this figure, CSSD used Mr. W’s September 16, 2011, paystub to determine his average weekly earnings and then multiplied the result times 52 weeks.¹³ CSSD also included as a deduction from income the child support he pays for prior children of \$787.96 per month.¹⁴ This amount was ordered by the court as of November 2010.¹⁵ CSSD also gave Mr. W a deduction of \$260.39 per month for paying California taxes,¹⁶ and finally, a deduction from income for his taxable retirement contributions.¹⁷ All of these adjustments to his income result in a proposed child support calculation of \$524 per month.¹⁸

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁹ 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. As the person who filed the appeal in this

⁶ See Log Notes, Exh. 10.

⁷ Exh. 9.

⁸ Exhs. 11-12.

⁹ Exh. 13.

¹⁰ Exh. 14.

¹¹ Obligor’s Exh. A at pg. 12.

¹² Exh. 16.

¹³ See CSSD’s Submission to Record at pg. 1, n.1: $\$39,593.70 \div 37 = \$1,070.10 \times 52 \text{ weeks} = \$55,645.20$ per year.

¹⁴ Exh. 16.

¹⁵ Exh. 15 at pg. 2.

¹⁶ See Exh. A at pg. 18; Exh. 16 at pg. 1.

¹⁷ *Id.* See also Exh. A at pg. 16.

¹⁸ Exh. 16 at pg. 1.

¹⁹ AS 25.27.190(e).

case, Mr. W has the burden of proving by a preponderance of the evidence that CSSD issued the Decision on Request for Modification Review in error.²⁰

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." CSSD initially denied Mr. W's request for modification for the reason that the agency's estimate of his 2011 income resulted in a child support amount of \$602 per month – close to a 15% change from the previous child support amount of \$660, but not quite over that threshold.²¹

Mr. W's year-to-date earnings as of September 16, 2011, were \$39,593.70. From that figure, CSSD estimated his total 2011 income at \$55,645.20. In addition to taxes and other mandatory deductions, Mr. W is entitled to a deduction for supporting prior children in the amount of \$787.96 per month, in addition to a deduction of \$260.39 per month for paying out of state taxes and a deduction of \$139.11 per month for his retirement contributions.²² Inserting these figures into CSSD's online child support calculator results in a child support amount of \$524 per month.²³ This figure is more than a 15% change from the prior amount of \$660 per month. As a result, Mr. W's child support obligation should be modified.

Mr. W's primary objection to the modification is that it was not made effective in December 2010 after he first requested a review of his child support order. Mr. W claims that he should not have to pay additional support for the period of time during which CSSD and Maryland child support authorities were figuring out how his case should be handled.

CSSD's regulations control this issue. The effective date of a child support modification is the first month after CSSD issues the notice that a petition for modification has been filed.²⁴ In Mr. W's case, the notice was issued on May 31, 2011,²⁵ so the modification should be effective as of June 1, 2011.

Mr. W's argument that he should not have to pay the higher support amount during the delay in this case is not persuasive because his own statement to CSSD caused that delay. When he first requested a modification of his order on December 6, 2010, Mr. W included a letter dated

²⁰ 15 AAC 05.030(h).

²¹ The threshold is \$561 per month, which is calculated by multiplying \$660 times 85%, which represents a reduction of 15%. Thus, $\$660 \times .85 = \561 .

²² See Exh. A at pg. 16.

²³ Exh. 16 at pg. 2.

²⁴ 15 AAC 125.321(d).

²⁵ Exh. 9.

November 19, 2010, in which he informed CSSD that he had “moved out of the state of Alaska permanently.”²⁶ Ms. G lives in another state, so Mr. W’s move meant that neither parent nor the child L lived in Alaska. As a result, according to the Uniform Interstate Family Support Act (UIFSA), Alaska lost “continuing, exclusive jurisdiction” over Mr. W’s support order and CSSD was therefore required to refer it to Maryland to process the modification.²⁷ It was not until May 25, 2011, that Mr. W contacted CSSD and informed the agency that he was still an Alaska resident.²⁸ Within six days CSSD had issued the required notice of a petition for modification and began processing the modification.

Since Mr. W’s initial statement to CSSD indicated he had moved permanently, CSSD’s referral of his child support order to Maryland for a modification was consistent with the requirements of UIFSA. Also, when Mr. W informed CSSD that he had changed his mind about being an Alaska resident, the agency timely issued a notice to Ms. G that Mr. W had filed a modification request. The effective date of the modification of Mr. W’s support order is correctly set at June 1, 2011.

IV. Conclusion

Mr. W met his burden of proving by a preponderance of the evidence that CSSD's Decision on Request for Modification Review was issued in error. Based on his year-to-date income figures and correct deductions from income, Mr. W’s child support is now correctly calculated at \$524 per month, which is more than a 15% change in the support amount. As a result, he is entitled to a modification and it is effective June 1, 2011, the first month after CSSD issued the notice that a modification petition had been filed.

V. Child Support Order

- CSSD’s August 22, 2011, Decision on Request for Modification Review is vacated;
- Mr. W’s child support obligation for L is modified to \$524 per month for one child, effective June 1, 2011 and ongoing;

²⁶ Exh. 2 at pg. 2.

²⁷ See AS 25.25.205(a)(1).

²⁸ See Exh. 10.

- All other provisions of the prior order in effect in Mr. W's case, the Decision and Order *In the Matter of D R. W*, OAH No. 07-0695-CSS (Dept. of Revenue, September 2, 2008), remain in full force and effect.

DATED this 14th day of November, 2011.

By: Signed
Kay L. Howard
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 16th day of December, 2011.

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

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