

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

IN THE MATTER OF:)

M J. T)

) OAH No. 12-0136-CSS

) CSSD No. 001159570

DECISION AND ORDER

I. Introduction

This case involves the obligor M J. T's appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 16, 2012. The obligee child is D, who is five years old. The custodian is K E.

The hearing was held on June 18, 2012. Mr. T appeared in person; Ms. E participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. T's child support is modified to \$416 per month, effective March 1, 2012, and further modified to \$482 per month, effective June 1, 2012 and ongoing, based on his actual income, and including deductions for supporting prior children.

II. Facts

A. Procedural Background

Mr. T's child support obligation for D was set at \$346 per month in November 2011.¹ Ms. E requested a modification review on February 24, 2012.² On February 28, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. T did not provide any information at that time. CSSD subsequently issued a Modified Administrative Child Support and Medical Support Order that modified Mr. T's child support to \$403 per month, effective March 1, 2012.⁴ Mr. T appealed on May 14, 2012, asserting that the facts as set forth (in CSSD's modification order) were incorrect.⁵

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 7.

B. *Material Facts*⁶

Mr. T and Ms. E are the parents of D, who is five years of age. D lives full-time with Ms. E.

Mr. T works for the State of Alaska as a no name at the No Name Center.⁷ He began working there on a part-time basis in March 2009, and was promoted to a full-time permanent position in November 2010.⁸ Mr. T earned \$24,103.44 in 2010.⁹ In 2011, his first complete year of working full-time, Mr. T earned \$37,082.79.¹⁰

During the first half of 2012, Mr. T earned gross wages of \$3,523 monthly.¹¹ According to his employer, Mr. T was to receive a 2% wage increase to \$3,593 as of July 1, 2012.¹² He also receives an additional \$1 per hour for working on the weekends, known as a “weekend premium.”¹³ As of the pay period ending May 15, 2012, Mr. T’s year-to-date gross income was \$20,340.87.¹⁴ Using this information, CSSD extrapolated Mr. T’s total 2012 income from employment to be \$42,276.¹⁵ Adding the most recent PFD of \$1,174, CSSD estimated Mr. T’s total annual income for 2012 at \$43,450.¹⁶

Mr. T is entitled to deductions from income for federal income taxes, FICA, the supplemental benefits system (SBS), retirement, union dues, and for paying support for prior children. Mr. T has two children older than D. The oldest is a daughter named P, born in 1993. Mr. T was previously paying support for P of \$334 per month, but those payments stopped in May 2012 upon her emancipation.¹⁷ He also pays support for a daughter named N, who was born in 2002, of \$267 per month.¹⁸ In this case, Mr. T’s deduction from income for paying support for both P and N is \$601 per month for March 2012, the effective date of the

⁶ The material facts are taken from Mr. T’s hearing testimony, unless stated otherwise.

⁷ Exh. C at pg. 1.

⁸ *Id.*

⁹ Exh. 6 at pg. 1.

¹⁰ *Id.*

¹¹ Exh. C at pg. 1.

¹² *Id.*

¹³ *Id.*

¹⁴ Exh. B at pg. 2.

¹⁵ Exh. 7.

¹⁶ *Id.*

¹⁷ CSSD’s Post-Hearing Brief at pg. 1.

¹⁸ CSSD’s Post-Hearing Brief at pg. 1. Mr. T also has a son named F, but he is significantly younger than D and does not entitle Mr. T to a prior child deduction.

modification, through May 2012, the month P emancipated. As of June 2012, he pays support only for N, so his deduction for supporting prior children is reduced to \$267 per month.

Using its estimate of his actual 2012 income, and including all of the applicable deductions, Mr. T's modified child support is correctly calculated at \$416 per month for March 2012 through May 2012, then at \$482 per month, effective June 2012, and ongoing.¹⁹

In addition to his income from employment, Mr. T earns cash on the side as a security guard for entertainment events. Ms. E claims Mr. T has been doing this work at least since 2006, when they first met; she estimated he worked on as many as twenty different events while they were together, up until D was about 13-14 months old. Mr. T admitted he has done security work on the side, but he stated it was for no more than four events. Although Mr. T acknowledged he has cash income not reflected on his paystubs, there is insufficient evidence to estimate a consistent source of income for child support purposes from Mr. T's side work.

Mr. T provides medical insurance for D through his union health care trust. He is on the family plan, which totals \$195 per month.²⁰

III. Discussion

Mr. T filed the appeal in this matter. His primary challenge is about the lack of a medical credit in the support calculation for the medical insurance he pays on D's behalf. As the party who filed the appeal, Mr. T has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect.²¹

Child support orders may be modified upon a showing of "good cause and material change in circumstances."²² 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. Mr. T's child support was previously \$346 per month, so a child support calculation of \$397.90 or higher would be sufficient to modify his child support obligation.²³ A modification is effective beginning the month after the parties are

¹⁹ Exhs. 7 & 8.

²⁰ Exh. A at pg. 1.

²¹ 15 AAC 05.030(h).

²² AS 25.27.190(e).

²³ $\$770 \times 15\% = \51.90 . $\$346 + \$51.90 = \$397.90$.

served with notice that a modification has been requested, so this modification is effective as of March 1, 2012.²⁴

A. CSSD Will Determine Mr. T's Medical Credit

Mr. T testified that he has been paying for and providing health insurance for D, and he documented the cost of his premiums for a family plan.²⁵ He questioned why the cost of insurance was not included in the child support calculation, and also why he does not get a higher credit for providing insurance. Mr. T testified that because he needed to provide insurance for at least one child, he had to purchase a family plan, so he wants the medical credit to reflect the family plan rather than just D's premium.

The Medical Support portion of the administrative order requires the purchase of medical insurance when it is available at a reasonable cost.²⁶ The procedure set out in the modification order allows each parent to provide proof of insurance and the cost of that insurance. The order then directs CSSD to provide appropriate credits and debits based on the cost of insurance.²⁷ Pursuant to this order, CSSD has the authority to administratively change the credit or debit amount as the cost of insurance changes, without issuing a new order.²⁸ The current amount of any credit or debit is not set in this child support decision, but CSSD will be making the proper adjustment to Mr. T's child support amount once it has proof of his insurance coverage for D and the amount he pays for it. However, Mr. T is entitled to a deduction only for 50% of his premium for D. Whether his health insurance trust requires that he purchase a family plan is not an issue that can be addressed here.

B. Deduction for Prior Children

A parent is entitled to a deduction from income for "child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid"²⁹ It is only a deduction from income, not a dollar-for-dollar credit. The prior child deduction is applicable in this case and CSSD has used it to calculate Mr. T's support obligation. Mr. T's deduction from income for paying support for P and N totals \$601 per month

²⁴ 15 AAC 125.321(d). In this case, the notice was issued on February 28, 2012. Exh. 3.

²⁵ Exh. A at pg. 1.

²⁶ Exh. 4 at pg. 2 (section II.A.1 of the order).

²⁷ Section II.B & C of the order.

²⁸ Section II.D of the order.

²⁹ Civil Rule 90.3(a)(1)(C).

for the period from March 2012, the effective date of the modification, through May 2012, the month P emancipated. However, as of June 2012, his deduction for supporting prior children is reduced to \$267 per month, based on his support payment for N. These figures are correct and should be included in the calculation of Mr. T's support obligation.

C. Child Support Calculation

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 correctly estimated Mr. T's 2012 income and included all of the deductions to which he is entitled, including those for federal income taxes, FICA, the supplemental benefits system (SBS), retirement, union dues, and for paying support for prior children. Mr. T's modified child support is thus correctly calculated at \$416 per month for March 2012 through May 2012, and at \$482 per month, effective June 2012, and ongoing.³⁰

IV. Conclusion

Mr. T 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), because his income had to be adjusted. The calculation was done pursuant to Civil Rule 90.3(a), and is based on his actual income and the appropriate deductions, including one for paying support for up to two prior children. Mr. T's modified child support should be set at \$416 per month for March 2012 through May 2012, and at \$482 per month, effective June 2012, and ongoing. CSSD will adjust Mr. T's child support to reflect a medical credit after this decision is issued. There has not been a request for a variance based on financial hardship under Civil Rule 90.3(c), and one is not warranted in this case.

V. Child Support Order

- Mr. T's child support for D is modified to \$416 per month, effective March 1, 2012, and further modified to \$482 per month, effective June 1, 2012 and ongoing;

³⁰ Exhs. 7 & 8.

- All other provisions of CSSD's Modified Administrative Child Support and Medical Support Order dated April 16, 2012, remain in full force and effect.

DATED this 12th day of September, 2012.

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 1st day of October, 2012.

By: Signed
Signature
Kay L. Howard
Name
Administrative Law Judge
Title

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