

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

IN THE MATTER OF: )

K A. T )

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) OAH No. 12-0178-CSS

) CSSD No. 001102654

**DECISION AND ORDER**

**I. Introduction**

The obligor, K A. T, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on June 20, 2012. The obligee child is N, 14. The custodial parent is T E. D.

The hearing was held on July 31, 2012. Mr. T appeared in person; Ms. D appeared by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. T's child support is modified to \$932 per month for one child, effective June 1, 2012, and ongoing.

**II. Facts**

*A. Procedural Background*

Mr. T's child support obligation for N was set at \$473 per month in February 2009.<sup>1</sup> On May 1, 2012, Ms. D initiated a modification review.<sup>2</sup> On May 3, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. T did not provide financial information, so on June 20, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified his ongoing child support to \$1,013 per month, effective June 1, 2012.<sup>4</sup> He appealed on June 27, 2012, asserting CSSD's estimation of his income for the child support calculation was incorrect.<sup>5</sup>

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.  
<sup>4</sup> Exh. 4.  
<sup>5</sup> Exh. 5.

*B. Material Facts*

Mr. T is retired from the military and is receiving a pension and disability pay. In addition, he works part-time at a local college. His total income is derived from a combination of several sources:

While he was on active duty, Mr. T held the rank of E-8, Master Sergeant. He is currently retired and has been receiving a pension since at least 2009.<sup>6</sup> For the annual period encompassed by the 2<sup>nd</sup> quarter of 2011 through the 1<sup>st</sup> quarter of 2012, Mr. T received \$31,160 in pension payments.<sup>7</sup>

Mr. T has been rated 80% disabled by the military, but he was reticent about providing information, so it is not known if his disability is combat related. His rating was recently increased from 70% to 80%, so his monthly disability payment increased from \$1,225 to \$1,478 as of June 2012.<sup>8</sup> Using these figures, it is estimated that Mr. T will receive approximately \$16,471 in disability payments during 2012.<sup>9</sup>

Mr. T has worked as an adjunct teacher at Alaska No Name since the end of 2010.<sup>10</sup> Initially he received on the average approximately \$7,000 per quarter, but his wages from the school in 2012 have gone down.<sup>11</sup> Mr. T provided a printout of his No Name paystubs for the first half of 2012.<sup>12</sup> The printout shows he received income from the school totaling \$8,601 through the end of June 2012. Mr. T testified he had been reduced to half-time for the second part of the year, so the wages he received from June through December would be about half of what he earned from January through June. Thus, the later half-year total would be approximately \$4,300.50,<sup>13</sup> making his total estimated income from Alaska No Name \$12,901.50 in 2012.<sup>14</sup>

Taking all of the above funds that were reported or estimated for Mr. T, his total income from all sources for 2012 is estimated at \$61,870.50. This figure also includes the 2012 PFD of

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<sup>6</sup> See Exh. 6.

<sup>7</sup> Exh. 6 at pg. 1.

<sup>8</sup> K A. T hearing testimony; see also Affidavit of Erin Brian, CSSD Specialist, dated August 7, 2012.

<sup>9</sup>  $(\$1,225 \times 5) + (\$1,478 \times 7) = \$6,125 + \$10,346 = \$16,471$ .

<sup>10</sup> Exh. 6 at pg. 1.

<sup>11</sup> Exh. 6 at pg. 1.

<sup>12</sup> Employee Check History at pg. 2, received by the OAH on July 31, 2012.

<sup>13</sup>  $\$8,601 \div 2 = \$4,300.50$ .

<sup>14</sup>  $\$8,601 + \$4,300.50 = \$12,901.50$ .

\$878 and \$460 in unemployment benefits (UIB) that Mr. T has received so far in 2012.<sup>15</sup> The total income figure is inserted into CSSD’s online child support calculator, which determines the deductions for federal income taxes, FICA and unemployment insurance. The result is a child support amount of \$932 per month for one child.<sup>16</sup>

### III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>17</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. Mr. T’s child support has been \$473 per month since 2009. Thus, a child support calculation of \$543.95 or more would be sufficient to warrant modification in this case.<sup>18</sup>

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of June 1, 2012.<sup>19</sup> In a child support matter, the person who files the appeal, in this case, Mr. T, has the burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect.<sup>20</sup>

#### A. *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.” In addition to income from wages, Civil Rule 90.3 specifically provides that unemployment benefits, pensions and disability payments are considered income and must be included in an obligor’s child support calculation.<sup>21</sup>

In this case, CSSD modified Mr. T’s child support to \$1,013 per month, an increase from his prior order of \$473 per month. During the hearing, Mr. T established that his 2012 income

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<sup>15</sup> See Exh. 6 at pg. 2.

<sup>16</sup> Attachment A.

<sup>17</sup> AS 25.27.190(e).

<sup>18</sup>  $\$473 \times 115\% = \$543.95$ .

<sup>19</sup> 15 AAC 125.321(d). In this case, the notice was issued on May 3, 2012. Exh. 3.

<sup>20</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

<sup>21</sup> Civil Rule 90.3, Commentary III.A.12, 13, 25. The disability payments are nontaxable, so the online child support calculator keeps them separate from taxable income and does not compute income taxes on that portion of the total income figure. See Attachment A.

more likely than not will be lower than CSSD estimated, primarily because he is working less time at the career college during the second half of 2012 and his wages for the year will be about \$5,000 less than CSSD predicted.<sup>22</sup> The obligor's other income categories were each somewhat lower here than in CSSD's initial modification worksheet, so the total difference between the incomes in the two calculations is about \$7,000. Mr. T's child support amount is now calculated at \$932 per month. It is lower than the modification order, but it is based on Mr. T's actual income documents, his testimony and wage data provided by the military and reported to the Alaska Department of Labor and Workforce Development. It is thus correct, based on all the evidence presented, and it is a reasonable measure of Mr. T's ability to pay support.

*B. Mr. T's other issues*

Mr. T raised two other issues that should be addressed, at least briefly. The first concerns a challenge to the paperwork that established his paternity of N. Mr. T was told during the hearing that the formal hearing could not resolve paternity issues. This is because the administrative law judge cannot address legal issues that arose before the effective date of the modification. He was informed he would have to seek relief first with CSSD, by filing a petition to disestablish paternity. He stated he understood and dropped the paternity issue.

Mr. T's other issue involves a request to have the custodian ordered to use the child support funds to support only the child. The administrative law judge does not have the authority to issue such an order, but even if she did, opinions of the Alaska Supreme Court indicate that it is the custodial parent's prerogative "to decide how to spend the support money on the children. If [s]he is not fulfilling [her] parental role responsibly, then [the obligor] may petition for custody or take other measures to ensure that the children are provided for."<sup>23</sup> A non-custodial parent should not be able to overrule the decisions of the custodial parent. However, if the obligor parent has a concern for the safety or care of the child, he or she should seek relief from the appropriate tribunal, such as the Superior Court. Mr. T's concerns seemed not to be for N's care or safety, but to keep the custodian from using the child support funds for herself instead of the child.

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<sup>22</sup> See Exh. 4 at pg. 8, Attachment A.

<sup>23</sup> *CSSD v. Campbell*, 931 P.2d 416, 420 (Alaska 1997).

**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. His income has been adjusted based on the evidence presented and the child support recalculated to \$932 per month for one child. This figure is correct and should be adopted. Mr. T’s other concerns cannot be resolved through the formal hearing process.

There was no request for or grant of a variance under Civil Rule 90.3(c).

**V. Child Support Order**

- Mr. T is liable for modified ongoing child support for N in the amount of \$932 per month, effective June 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated June 20, 2012, remain in full force and effect.

DATED this 30<sup>th</sup> day of November, 2012.

Signed  
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 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 17<sup>th</sup> day of December, 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.]