

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

IN THE MATTER OF:)

H T. F)

OAH No. 12-0274-CSS

CSSD No. 001036855

DECISION AND ORDER

I. Introduction and Procedural Background

The custodian, K F, petitioned for modification of the 2011 Decision and Order setting obligor H T. F's support obligation at \$959 per month for one child.¹ Ms. F's petition was granted and on July 5, 2012 the Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order, effective May 1, 2012, that increased Mr. F's monthly child support obligation to \$1,173 per month.² The obligee child is D, who is 17.5 yrs old. Also on July 5, 2012, Mr. F petitioned for modification.³ Mr. F's petition for modification is in essence an appeal of the July 5, 2012 Modified Administrative Child Support and Medical Support Order and will be treated as such.

A telephonic hearing commenced August 27, 2012. All parties participated. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was continued to September 13, 2012 so Ms. F could review CSSD's pre-hearing brief and exhibits. Ms. F was called at the number she provided, but the phone number was answered by a recording that "this number could not be reached." The file notes show Ms. F contacted the Office of Administrative Hearings on September 10, 2012 with questions but no new telephone number is noted. The hearing moved forward in Ms. F's absence.

Mr. F's earnings history⁴ and actual earnings support two methods of estimating annual income for 2012: a three year average, or annualizing the first two quarters of earnings in 2012. Neither method results in a new child support amount that is more than a 15% change from the previous order. Therefore, the July 5, 2012 Modified Administrative Child Support and Medical Support Order should be vacated.

¹ Exh. 1 *In re F* OAH No. 11-0009-CSS (May 23, 2011); Exh. 2.

² Exh. 6.

³ Exh. 7.

⁴ Exh. 10.

II. Facts

Mr. F's child support obligation was set at \$959 per month for one child in May 2011.⁵ Ms. F requested a modification review in April 2012.⁶ On July 5, 2012 CSSD issued its Modified Administrative Child Support and Medical Support Order increasing Mr. F's child support obligation, effective May 1, 2012, to \$1,173 per month.⁷ The increase was attributed to CSSD determining that Mr. F's total gross income for 2012 should be \$98,613.68. This amount was calculated by extrapolating Mr. F's pay and adding the permanent fund dividend (PFD).⁸

The same day CSSD issued its Modified Administrative Child Support and Medical Support Order, Mr. F filed for a modification review because he lost his job on July 1, 2012.⁹ On July 23, 2012, CSSD received Mr. F's appeal of the July 5, 2012 Modified Administrative Child Support and Medical Support Order increasing his monthly child support obligation. He appealed for the same reason he petitioned to modify.

In preparation for the hearing CSSD prepared an extract of Mr. F's earnings reported to the Alaska Department of Labor and Workforce development.¹⁰ The following earnings have been reported:

First Two Quarters 2012	\$40,076.37 ¹¹
Four Quarters 2011	\$83,170.74
Four Quarters 2010	\$54,354.70
Four Quarters 2009	\$100,405.11

Mr. F was laid off as of July 2012. Prior to the layoff he worked as a maintenance electrician for the No Name Regional Corporation. He also has experience as a construction electrician, but that job did not provide consistent income so Mr. F made the decision to change jobs and work as a maintenance electrician even though it pays less but results in a more stable income stream.

⁵ Exh. 1 (the oldest child, Julian, emancipated in June 2008, so the amount was adjusted to \$1,414 per month for two children based on the calculation at Exh. 1, pg. 7).

⁶ Exh. 2.

⁷ Exh. 6.

⁸ Exh. 6 at 8.

⁹ Exh 7.

¹⁰ Exh. 10.

¹¹ When annualized, this one-half year of Mr. F's 2012 earnings is \$80,152.74.

Mr. F is not asking that his child support be reduced from the previously ordered \$959 because he is unemployed.¹² Rather he argues that the Modified Administrative Child Support and Medical Support Order should be vacated because it overstates his annual earnings.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹³ 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, Mr. F has the burden of proving by a preponderance of the evidence that CSSD issued the July 2012 Modified Administrative Child Support and Medical Support Order in error.¹⁴

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." It is calculated as a percentage of anticipated future income determined after examining all available evidence to make the best possible calculation. Here, the available evidence supports two possible methodologies for calculating Mr. F's future income. Under either method the result is the same – no material change in circumstances support modification, either up or down.

CSSD looked at Mr. F's income and noted it was erratic over the past three years. CSSD offers that under these circumstances it would be appropriate to average Mr. F's income for 2009, 2010, and 2011.¹⁵ The average of these three years results in estimated gross earnings totaling \$79,310.18.¹⁶ When the PFD is included, and after allowable deductions using CSSD's Child Support Guideline Calculator, Mr. F's monthly child support for one child is \$1,028.¹⁷

The second method is based on annualizing Mr. F's actual earnings from the first six months of 2012. This results in annual gross earnings totaling \$80,152.¹⁸ When the PFD is

¹² F Testimony.

¹³ AS 25.27.190(e).

¹⁴ 15 AAC 05.030(h).

¹⁵ Ak. R. Civ. Pro. 90.3 Commentary (III)(E).

¹⁶ $(\$83,170.74 + \$54,354.70 + \$100,405.11) / 3 = \$79,310.18$.

¹⁷ Attachment A.

¹⁸ $\$40,076 \times 2 = \$80,152$

included and after allowable deductions, using CSSD's Child Support Guideline Calculator, Mr. F's monthly child support for one child is \$1,038.¹⁹

The 2012 Modified Administrative Child Support and Medical Support Order based its child support calculation on extrapolating Mr. F's paychecks plus the PFD. However, the pay checks used ended April 1, 2012 and resulted in annual gross earnings totaling \$97,439. When the extrapolated first six months of earnings are compared to the actual six months of earnings, it is apparent that the actual earnings are significantly less. Child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct.

Child support "is determined by that parent's ability to provide for the child."²⁰ Mr. F's support for one child was modified in 2011 to \$959 per month. To exceed the presumptive 15% change from the previous order, Mr. F's support obligation calculated pursuant to Civil Rule 90.3(a) must be greater than \$1,102.85. Under either calculation (using current actual income or averaged income) Mr. F's child support obligation for one child is only half of what is necessary to support a presumptive material change in circumstances. Therefore, the record does not support a finding of a material change in circumstances, and as a result, the July 5, 2012 Modified Administrative Child Support and Medical Support Order should be vacated.

IV. Conclusion

Mr. F met his burden of proving by a preponderance of the evidence that CSSD's July 5, 2012 Modified Administrative Child Support and Medical Support Order was issued in error. CSSD incorrectly estimated his total income for 2012. His actual income should be the basis of the child support calculations. Using Mr. F's actual earnings for the first six months of 2012, and doubling for an estimated annual gross income to be earned when the support is paid, results in a child support amount of \$1,038 per month for one child. This amount is less than a 15% change from the existing support order and thus does not support a finding of a material change in circumstances.

V. Child Support Order

- CSSD's July 5, 2012 Modified Administrative Child Support and Medical Support Order is vacated;

¹⁹ Attachment B.

²⁰ Ak. R. Civ. Pro. 90.3 Commentary (I)(B).

- The provisions of the prior order in effect in Mr. F's case, the Decision and Order *In the Matter of H T. F*, OAH No. 11-0009-CSS, adopted as a final decision on May 23, 2011, remain in full force and effect.

DATED this 20th day of September, 2012.

By: Signed
Rebecca L. Pauli
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 9th day of October, 2012.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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