

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

In the Matter of:)
) OAH No. 12-0301-CSS
 T L. L) CSSD No. 001109044
)
_____)

DECISION AND ORDER

I. Introduction

This case involves the obligor T L. L's appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on August 3, 2012. The obligee child is Y, 15. The other party is D M. D.

The formal hearing was held on September 18, 2012. Both parties participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. Based on the record and after careful consideration, Ms. L's child support is modified to \$112 per month for one child, effective June 1, 2012.

II. Facts

A. Procedural Background

Ms. L's child support obligation for Y was set at \$192 per month in May 2011.¹ On May 24, 2012, Ms. L requested a modification review.² On January 31, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ On August 3, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Ms. L's child support to \$258 per month for two children.⁴ She appealed on August 13, 2012, asserting she only works 20 hours per week and supports two children in the home.⁵ Prior to the hearing, CSSD filed an affidavit containing Ms. L's wage information that was provided by the Alaska Department of Labor and Workforce Development.⁶

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 5.
⁶ Exh. 6.

B. Material Facts

Ms. L works for a local restaurant as a hostess, backup server and “busgirl.” According to her employer, she works on average only 20 hours per week or less, and is paid the minimum wage of \$7.75 per hour.⁷ Ms. L does not receive tips. At this income level, her average annual income from wages is estimated at \$8,060.⁸ When the 2012 PFD of \$878 is added, her total gross income is \$8,938.⁹

Ms. L has a vehicle, but cannot afford insurance, so she limits her driving as much as possible and does not search for another job for that reason, as well. She lives close to her current employer.

Ms. L has two other children in the home, N, 17, and K, 12. Ms. L does not receive support from the father of either child, but the family receives Medicaid benefits and food stamps. N is older than Y and thus entitles Ms. L to a deduction from income for supporting a prior child in the home.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁰ 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. 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, 2012.¹¹

The person who filed the appeal, in this case, Ms. L, has the burden of proving by a preponderance of the evidence that the agency’s calculations are incorrect.¹² 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,” minus mandatory deductions such as taxes and contributions to Social Security. The PFD is included in a person’s income for child support purposes. A parent who supports an older child in the home is entitled to an additional deduction

⁷ “Employment Statement” received on September 17, 2012, marked by the administrative law judge as Exh. 7.
⁸ \$7.75 per hour x 20 hours per week x 52 weeks = \$8,060.
⁹ \$8,060 + \$878 = \$8,938.
¹⁰ AS 25.27.190(e).
¹¹ 15 AAC 125.321(d). In this case, the notice was issued on May 30, 2012. Exh. 3.
¹² 15 AAC 05.030(h).

from income.¹³ The amount of the deduction is determined under Civil Rule 90.3 as though the parent were paying support for that child.¹⁴

Ms. L's annual income from her current job has been correctly estimated at \$8,060, and adding the PFD results in total gross income of \$8,938. A child support calculation for one child from this income amount is \$141 per month.¹⁵ This is the amount of the deduction for supporting a prior child that is inserted into another calculation using the same income. The final child support amount is thus calculated at \$112 per month for Y.¹⁶

Ms. D objects to Ms. L's child support being lowered. Ms. D claims that instead of lowering Y's support, that Ms. L can utilize means-based assistance or get help from churches or the Boy Scouts. While Ms. D is correct that Ms. L may be able to get help from other sources, it does not mean that Ms. L's child support should stay unmodified. Child support is based on a parent's ability to pay, as measured by his or her income. Ms. L provided evidence that she cannot get any more hours at her current place of employment and that it is difficult for her to look for other work because her car is uninsured and her hours vary so much that she cannot predict when she would be available for another job. Ms. L's testimony about her work hours is credible and it is reasonable for her to restrict the amount of driving she does at this time because her car is not insured.

IV. Conclusion

Ms. L met her burden of proving by a preponderance of the evidence that her modified child support amount was incorrect. Her modified child support is now correctly calculated at \$112 per month, which includes a deduction for supporting a prior child in the home. There was no variance under Civil Rule 90.3(c) requested or granted in this appeal.

V. Child Support Order

- Ms. L's child support obligation for Y is modified to \$112 per month for one child, effective June 1, 2012;

¹³ Civil Rule 90.3(a)(1)(D).

¹⁴ *Id.*

¹⁵ Attachment A.

¹⁶ Attachment B.

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 3, 2012, remain in full force and effect.

DATED this 23rd day of November, 2012.

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 10th 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.]