

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

IN THE MATTER OF: )

D D. N )

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) OAH No. 12-0356-CSS

) CSSD No. 001165426

**DECISION AND ORDER**

**I. Introduction**

The obligor, D D. N, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on July 23, 2012. The obligee child is E, age 2. The custodian is L C. B.

The hearing was held on September 17, 2012. Both Mr. N and Ms. B participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, Mr. N has not met his burden of proving that CSSD's order was incorrect. As a result, the Modified Administrative Child Support and Medical Support Order dated July 23, 2012 is affirmed – Mr. N's child support is modified to \$228 per month for one child, effective July 1, 2012.

**II. Facts**

*A. Procedural Background*

Mr. N's child support obligation for E was set at \$50 per month in 2010.<sup>1</sup> In June 2012, Ms. B requested a modification review and CSSD notified Mr. N.<sup>2</sup> He did not supply income information,<sup>3</sup> but Ms. B filed evidence of Mr. N's financial circumstances.<sup>4</sup> On July 23, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that increased Mr. N's child support to \$228 per month, effective July 1, 2012.<sup>5</sup> Mr. N filed an appeal on August 27, 2012, asserting primarily that he does not have a job or income coming in.<sup>6</sup>

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exhs. 2-3.

<sup>3</sup> CSSD's Pre-Hearing Brief.

<sup>4</sup> Exh. 4.

<sup>5</sup> Exh. 5 at pg. 8. This figure was calculated from the minimum wage, not from Mr. N's actual income.

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

*B. Material Facts*

Mr. N was previously incarcerated and his child support was set at \$50 per month in 2010. CSSD affirmed that amount in a proceeding to modify the support amount in 2011.<sup>7</sup>

Little is known of Mr. N's actual financial circumstances. He testified that since his release from jail in February 2011, he has looked for work in the labor sector, primarily as a warehouseman or in a restaurant. He was last employed as a warehouseman and earned \$11 per hour.

Mr. N stated that he lives with a girlfriend who supports him. He testified that she lives in Texas and is employed in marketing, but he does not know where she works or how much she earns. Mr. N stated that he does not own a vehicle and that his girlfriend gets food stamps. When asked to explain why he lives with someone in another state, Mr. N replied that he lives in both Texas and Alaska and spends time in each state. When in Alaska, he testified that he stays with family members who support him and provide his transportation when he needs to go somewhere.

The custodian, Ms. B, had a significantly different take on the obligor's circumstances. She testified that Mr. N supports himself by selling crack cocaine. She said she knows this because she observed him making sales and taking cash in exchange for drugs while they lived together prior to separating at Thanksgiving time in 2011. She said the obligor had a drug conviction in 2006 and that the investigation into his criminal activities ultimately led the police to a storage unit he owned in which \$30,000 in cash and three vehicles were discovered. In support of her testimony, Ms. B filed copies of several pictures she claimed were from Mr. N's Facebook page and that show his lavish lifestyle.<sup>8</sup> However, the pictures Ms. B submitted did not copy well. Outlines of individuals and objects can be seen, but the pictures are mostly black and are not useful for evidence in this child support appeal.

Mr. N acknowledged that he has a past drug conviction from the year 2006, but he strenuously objected to the custodian's characterization that he is a drug dealer. He did admit that in the past he has paid cash for vehicles and that he has owned a Dodge Magnum.

**III. Discussion**

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<sup>7</sup> Exh. 1.

<sup>8</sup> Exh. 4.

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>9</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. N’s child support has been \$50 per month since 2007. Thus, a child support calculation of \$57.50 or more would be sufficient to warrant modification in this case.<sup>10</sup>

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.<sup>11</sup> In this case, the notice was issued on June 8, 2012, so a modification would be effective as of July 1, 2012.<sup>12</sup> In a child support matter, the person who files the appeal, in this case, Mr. N, has the burden of proving by a preponderance of the evidence that CSSD’s modification order was incorrect.<sup>13</sup>

In response to Ms. B’s petition for modification, CSSD modified Mr. N’s child support to \$228 per month.<sup>14</sup> The agency calculated this figure from an income amount of \$15,080. CSSD arrived at that annual income by multiplying the minimum wage of \$7.25 per hour times 2080, the number of hours a full-time employee would work in one year.<sup>15</sup> Mr. N argues that his child support should stay at \$50 per month because he is currently unemployed.

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 Social Security. In determining an obligor parent’s “total income from all sources,” CSSD is directed to use the “best information available” to determine a parent’s ability to pay support.<sup>16</sup> If no evidence such as wages or tax returns showing self-employment income is available, CSSD is authorized to use the minimum wage to estimate an obligor parent’s income.<sup>17</sup> That is what CSSD has done in Mr. N’s case – not having any income information for the obligor, CSSD used an estimate of what he would be earning if he were working in a minimum wage job.

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<sup>9</sup> AS 25.27.190(e).

<sup>10</sup> \$50 x 1.15 = \$57.50.

<sup>11</sup> 15 AAC 125.321(d).

<sup>12</sup> Exh. 3.

<sup>13</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

<sup>14</sup> Exh. 5 at pg. 8.

<sup>15</sup> *Id.* 40 hours per week x 52 weeks = 2,080 hours per year. Thus, 2,080 x \$7.25 = \$15,080.

<sup>16</sup> 15 AAC 125.050(a).

<sup>17</sup> 15 AAC 125.050(d)(2).

It is up to Mr. N to prove that CSSD's calculation was incorrect, but he has not met this burden. Ms. B's assertions of drug dealing aside, Mr. N has not presented sufficient proof that he cannot earn \$7.25 per hour. He stated that his last job paid \$11 per hour, so the minimum wage is significantly below that amount. Also, even though he is unemployed, it is more likely than not that if he were aggressively looking for work, that Mr. N's unemployment would be a temporary circumstance and he would be employed fairly quickly.

It should be noted that this decision does not conclude that Mr. N is voluntarily and unreasonably unemployed. Since he has been incarcerated in the past, it has not been established that his initial unemployment was voluntary. In this case, Mr. N has simply not met his burden of proving that CSSD's determination that he could earn the minimum wage is incorrect.

#### **IV. Conclusion**

Mr. N did not meet his burden of proving by a preponderance of the evidence that his modified child support amount was incorrect. He did not establish that he cannot earn the minimum wage. Thus, CSSD's Modified Administrative Child Support and Medical Support Order should be affirmed. Mr. N's modified child support is correctly calculated at \$228 per month pursuant to Civil Rule 90.3, without a hardship variation.

#### **V. Child Support Order**

- Mr. N's child support obligation for E is modified to \$228 per month for one child, effective July 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated July 23, 2012, remain in full force and effect.

DATED this 22<sup>nd</sup> day of October, 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 9<sup>th</sup> day of November, 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.]