

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

IN THE MATTER OF:)

D A. P)

OAH No. 12-0746-CSS

CSSD No. 001128679

DECISION AND ORDER

I. Introduction

The obligor, D A. P, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 8, 2012. The obligee child is K, 10. The custodial parent is M B.

The hearing was held on November 5, 2012 and November 28, 2012. Mr. P appeared at the second hearing; Ms. B appeared at both proceedings. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. P's child support is modified to \$1,056 per month, effective September 1, 2012, and further modified to \$1,112 per month, effective January 1, 2013, and ongoing.

II. Facts

A. Procedural Background

Mr. P's child support obligation for K was set at \$510 per month in October 2008.¹ On August 10, 2012, Ms. B initiated a modification review.² On August 20, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. P provided financial information.⁴ On October 8, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set his ongoing child support at \$1,356 per month, minus a medical credit of \$50.50, for a total amount to be collected of \$1,305 per month, effective September 1, 2012.⁵ Mr. P appealed on October 10, 2012, asserting that he works on the North Slope and does not receive any income for three weeks at a time.⁶

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exh. 6.
⁶ Exh. 7.

B. Material Facts

Mr. P and Ms. B are the parents of K, 10. K lives with Ms. B.

Mr. P is employed as a General Maintenance Foreman for No Name Alaska, Inc., where he has worked since June 2008.⁷ His employer reported his annual salary is \$78,000, based on a 40-hr work week, not including paid overtime.⁸ CSSD queried the Alaska Department of Labor and Workforce Development, whose database indicates Mr. P's earnings for the first three quarters of 2012 totaled \$72,383.22.⁹ From that figure, CSSD estimated that Mr. P's annual income for 2012 would be \$96,510.96.¹⁰ CSSD also determined that Mr. P received additional income in the form of a 2012 PFD, and that he pays into a 401k retirement plan at the rate of 7%.¹¹

A question arose during the hearing whether Mr. P is a resident of California or Alaska. He testified that initially in 2012, his address was listed as being in California, so he paid California income taxes for the first part of the year and changed his address to Alaska in early June 2012.

Mr. P's paystub dated for the period ending May 27, 2012, indicates that he paid California state taxes of \$356.45 for that pay period, for a total on the year of \$3,327.77.¹² As of the next pay period, however, Mr. P did not pay any California state taxes, yet his total for the year was still \$3,327.77.¹³ Prior to the hearing, Mr. P had provided copies of six paystubs for the pay periods from July 23, 2012 through August 27, 2012. Although the image on all of these copies is cut off on the right-hand side, enough information is showing so it is possible to see that Mr. P did not pay any California state taxes for any of those specific pay periods.¹⁴ It is thus more likely than not that for approximately the first half of 2012, Mr. P paid California state taxes totaling \$3,327.77, which, when averaged for the entire year, is \$277.31 per month.¹⁵

⁷ Letter from Mr. P's employer received November 26, 2012, and marked by the administrative law judge as Exh. 10.

⁸ *Id.*

⁹ Exh. 8.

¹⁰ Exh. 9 at pg. 1.

¹¹ Submission to Record at pg. 1.

¹² Exh. 11 at pg. 3. This exhibit is from an email message received from Mr. P on December 18-19, 2012, and marked by the administrative law judge as Exh. 11.

¹³ Exh. 11 at pg. 4.

¹⁴ *See* Exh. 4 at pgs. 1-6.

¹⁵ $\$3,327.77 \div 12 = \277.31 .

Inserting the amount of taxes Mr. P paid in 2012 into the child support calculation results in a modified child support amount of \$1,056 per month, effective September 2012.¹⁶

There is no evidence in the record whether Mr. P identified himself as a California or Alaska resident for the second half of 2012, or whether he is obligated to pay California taxes for any time period after mid-2012. Thus, the taxes figure should be taken out of the child support calculation, beginning with 2013, the next tax year. This results in a child support calculation of \$1,112 per month, as calculated by CSSD, effective January 2013.¹⁷

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁸ 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. P’s child support has been \$510 per month since 2008. Thus, a child support calculation of \$586.50 or more would be sufficient to warrant modification in this case.¹⁹

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 September 1, 2012.²⁰ In a child support matter, the person who files the appeal, in this case, Mr. P, has the burden of proving by a preponderance of the evidence that CSSD’s Modified Administrative Child Support and Medical Support Order was incorrect.²¹

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, retirement and Social Security.

In this modification review, CSSD modified Mr. P’s child support to \$1,305 per month, based on his income information that was available at the time.²² During the hearing process, Mr. P submitted documentation that proves it is more likely than not that his total annual income was overestimated. Using data from the Alaska Department of Labor and Workforce

¹⁶ Attachment A.

¹⁷ Exh. 9 at pg. 2.

¹⁸ AS 25.27.190(e).

¹⁹ $\$510 \times 115\% = \586.50 .

²⁰ 15 AAC 125.321(d). In this case, the notice was issued on August 20, 2012. Exh. 3.

²¹ 15 AAC 05.030(h); 2 AAC 64.290(e).

²² Exh. 6 at pg. 6.

Development, CSSD estimated his annual income at \$96,510.96. From that income figure, CSSD calculated Mr. P's child support at either \$1,025 or \$1,112 per month.²³ The lower figure reflects the California state taxes being included for the entire year; the higher figure does not include any state taxes.

CSSD stated in its Submission to Record that the agency objects to any California state taxes being used in the calculation, reasoning that “[i]f Mr. P did in fact pay CA state income tax in 2012, he needs to provide proof of this. If he cannot, then the adjustment is not warranted.” Mr. P did provide proof – two paystubs from mid-2012 show that he paid at least \$3,327.77 in California state taxes in 2012. As a result, he is entitled to an additional deduction for the state taxes he paid in the 2012 calculation. The total deduction averages \$277.31 per month, which results in a child support amount of \$1,056 per month.²⁴

Mr. P is not entitled to a deduction for paying California state taxes after 2012. There is no evidence in the record to support a finding that he has paid them since mid-2012, or that he is currently paying them, so a calculation of his ongoing child support amount should not include that deduction.²⁵ CSSD prepared a support calculation without the deduction for California state taxes, and that amount, \$1,112 per month, is correct as of January 2013.²⁶

Mr. P argues that he doesn't work all of the time because he is a “rotational worker,” so his child support should be lower than CSSD proposed. The support amount has been calculated based on an estimate of the obligor's actual income for 2012. His income is a combination of the straight time and overtime earnings he receives from employment. It does not matter whether he earned that income working just 40 hours per week or on a 3 week rotation. The length of his rotation on and off the North Slope is irrelevant to the determination of his total annual income for the year.

IV. Conclusion

Mr. P 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 for 2012 has been correctly estimated and his modified child support amount has been calculated

²³ See Exh. 9 at pgs. 1-2.

²⁴ See Attachment A.

²⁵ Typically another calculation would not be necessary in this modification action, but since a new calendar year is just beginning and the modified child support amount for 2012 would not be correct for 2013, a calculation for the new year should be done.

²⁶ See Exh. 9 at pg. 2.

at \$1,056 per month for 2012 and \$1,112 per month for 2013. These figures are correct and should be adopted.

V. Child Support Order

- Mr. P's child support for K is modified to \$1,056 per month, effective September 1, 2012, and further modified to \$1,112 per month, effective January 2013, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated October 8, 2012, remain in full force and effect.

DATED this 7th day of January, 2013.

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 28th day of January, 2013.

By: Signed

Signature
Kay L. Howard

Name
Administrative Law Judge

Title

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