

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

IN THE MATTER OF:)

B J. T)

) OAH No. 12-0825-CSS

) CSSD No. 001127855

DECISION AND ORDER

I. Introduction

The custodian, B B. X, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. T' case on October 5, 2012. The obligee child is K, 9.

The initial hearing was held on November 21, 2012. Both Mr. T and Ms. X appeared by telephone, but the hearing could not be concluded because of problems with Mr. T' cell phone. Both parties agreed to a supplemental hearing the next week and a notice was issued by first class mail that it would be on November 28, 2012, at 10:00 a.m. Ms. X could not be reached for that hearing and thus did not participate. Mr. T appeared by telephone again, as did Russell Crisp, Child Support Specialist, who represented CSSD.

Based on the evidence and after careful consideration, Mr. T is liable for modified ongoing child support for K in the amount of \$360 per month, effective as of August 1, 2012, and ongoing.

II. Facts

A. Procedural Background

Mr. T' child support obligation for K was modified to \$50 per month in February 2012.¹ On July 23, 2012, Ms. X initiated a modification review.² On July 27, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ On October 5, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. T' ongoing child support at \$254 per month, effective August 1, 2012.⁴ Ms. X appealed on

¹ Exh. 7. The exhibit numbers for this modification begin with Exhibit 7, not Exhibit 1, because CSSD included exhibits pertaining to Mr. T' prior modification. However, they are not applicable to this one modification.

² Exh. 8.

³ Exh. 9.

⁴ Exh. 10.

October 26, 2012, asserting that Mr. T had told her he had been working since May or June 2012 for either the Alaska Department of No Name or the Alaska Department of No Name.⁵ Prior to the hearing, CSSD filed an extract of Mr. T' earnings as reported to the Alaska Department of Labor and Workforce Development for 2012.⁶ From that information, CSSD prepared a revised child support calculation for Mr. T to pay \$360 per month.⁷

B. Material Facts

At the time of the initial hearing in this matter, Mr. T was working in a full-time seasonal position counting no name for the Department of No Name. He had cell phone problems at his work site during the hearing, so a supplemental hearing was calendared for one week later.

At the second hearing, Mr. T indicated his seasonal position had ended after the first hearing and that he was currently job hunting and hopefully would have another job soon. Mr. T acknowledged that CSSD's revised child support calculation had correctly estimated his likely 2012 income, from mid-year information obtained from the Alaska Department of Labor and Workforce Development. The agency determined Mr. T would earn \$24,893.47 in 2012, which includes wages, the 2012 PFD of \$878, and \$2,220 in UIB benefits.⁸ Using this total income figure, CSSD calculated a new child support amount of \$360 per month.⁹

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. Mr. T' child support has been \$50 per month since CSSD issued a modification order in early 2012. Thus, a child support calculation of \$57.50 or more would be sufficient to warrant modification in this case.¹¹

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 August 1, 2012.¹²

⁵ Exh. 11.

⁶ Exh. 12 at pgs. 1-2.

⁷ Exh. 12 at pg. 4.

⁸ *Id.*

⁹ *Id.*

¹⁰ AS 25.27.190(e).

¹¹ \$50 x 115% = \$57.50.

¹² 15 AAC 125.321(d). In this case, the notice was issued on July 27, 2012. Exh. 9.

In a child support matter, the person who files the appeal, in this case, Ms. X, has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect.¹³

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 this case, CSSD modified Mr. T' child support to \$254 per month, based on the Alaska minimum wage because he had not submitted income information.¹⁴ Prior to the hearing, CSSD more accurately estimated his likely 2012 income based on information that had recently been submitted to the Alaska Department of Labor and Workforce Development by his employer. From that updated income data, CSSD calculated a modified child support amount of \$360 per month. Mr. T agreed this figure is correct and consented to it being adopted for the modification. Ms. X did not participate in the second hearing, and did not contact the OAH thereafter, even after receiving a notice that \$360 per month likely would be entered as Mr. T' modified child support amount.

Thus, based on all of the evidence presented, CSSD's calculation of Mr. T' modified child support is correct, and it is a reasonable measure of his ability to pay support.

IV. Conclusion

It has been proven by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. Mr. T' child support has been accurately revised to \$360 per month for one child. This figure is correct and should be adopted, effective August 1, 2012.

V. Child Support Order

- Mr. T is liable for modified ongoing child support for K in the amount of \$360 per month, effective August 1, 2012, and ongoing;

¹³ 15 AAC 05.030(h); 2 AAC 64.290(e).

¹⁴ Exh. 10 at pgs. 4 & 8.

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated October 5, 2012, remain in full force and effect.

DATED this 31st day of December, 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 18th 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.]