

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

IN THE MATTER OF: )

M L. X )

OAH No. 12-1024-CSS

CSSD No. 001176102

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**DECISION AND ORDER**

**I. Introduction**

The obligor, M L. X, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on December 12, 2012. The obligee child is B, 17. The custodian of record is K S. J.

The hearing was held on January 16, 2013. Ms. X appeared in person; Mr. J participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD.

Based on the evidence and after careful consideration, Ms. X is liable for modified ongoing child support for B in the amount of \$239 per month, effective as of November 1, 2012, and ongoing. However, she was awarded temporary custody of B on January 10, 2013, so her ongoing support obligation is suspended as of that date, and it should not be reinstated so long as she has custody of B.

**II. Facts**

*A. Procedural Background*

Ms. X's child support obligation for B was modified to \$50 per month in December 2011.<sup>1</sup> On October 11, 2012, Mr. J initiated a modification review.<sup>2</sup> On October 24, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On December 12, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Ms. X's ongoing child support at \$224 per month, effective November 1, 2012.<sup>4</sup> Ms. X appealed on December 18, 2012, asserting that Mr. J has not been supporting B since October 2012, when she went into the No Name Academy.<sup>5</sup>

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<sup>1</sup> Exh. 3.  
<sup>2</sup> Exh. 4.  
<sup>3</sup> Exh. 5.  
<sup>4</sup> Exh. 6.  
<sup>5</sup> Exh. 11.

*B. Material Facts*

Ms. X and Mr. J are the parents of B, 17. B was living with Mr. J until October 1, 2012, when she entered the No Name Academy (NNA)

According to Ms. X, B is scheduled to graduate in May 2013 and she will turn 18 in September 2013. On January 10, 2013, Magistrate Jonathon H. Lack issued a Long Term Domestic Violence Order (DVO) that awarded temporary custody of B to Ms. X.<sup>6</sup> The order is in effect for a period of one year unless modified by a court order.<sup>7</sup> Ms. X has two younger children, K, 12, and D, 10.

Ms. X receives death benefits from the Social Security Administration (SSA) of \$702 per month. She was receiving \$666 per month until January 2013. In addition, Ms. X was working at No Name in 2012, but the entire staff was terminated in June 2012 because of a change in ownership. She has been on unemployment benefits (UIB) since then.

In the modification review, CSSD calculated Ms. X's child support obligation at \$224 per month, based on the agency's estimate that her annual income would be \$14,128.45.<sup>8</sup>

After the hearing, CSSD filed an affidavit indicating that in 2012, Ms. X's wages were \$5,697.33.<sup>9</sup> She was denied the 2012 PFD, but she did receive UIB of \$1,342; and SSA benefits totaling \$8,280.<sup>10</sup> As a result, her total income for 2012 was \$15,319.33, which yields a child support amount under Civil Rule 90.3 of \$239 per month.<sup>11</sup> Because it is based on the latest income information available for Ms. X, this amount is correct.

**III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>12</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. Ms. X's child support has been \$50 per

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<sup>6</sup> Received from Ms. X on January 16, 2013.

<sup>7</sup> *Id.*

<sup>8</sup> Exh. 6 at pg. 8.

<sup>9</sup> Exh. 9 at pg. 1.

<sup>10</sup> *Id.*

<sup>11</sup> Attachment A.

<sup>12</sup> AS 25.27.190(e).

month since December 2011. Thus, a child support calculation of \$57.50 or more would be sufficient to warrant modification in this case.<sup>13</sup>

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 November 1, 2012.<sup>14</sup> In a child support matter, the person who files the appeal has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect.<sup>15</sup>

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 Ms. X's child support to \$224 per month, based on the information the agency had at that time.<sup>16</sup> After the hearing, CSSD researched Ms. X's wages and ascertained they were higher than originally determined, based on information that had recently been submitted to the Alaska Department of Labor and Workforce Development by her employer.<sup>17</sup> From that updated income data, CSSD's online calculation worksheet yields a modified child support amount of \$239 per month. This figure is correct and should be adopted.

Ms. X asserts that she should not have to pay support to Mr. J for B because the child has not been in his custody since October 2012, when she entered NNA. Ms. X's argument does not change the result in her case. She is obligated to pay support for B because B does not live with her. CSSD must enforce the child support order so long as Ms. X is a non-custodial parent. The agency will determine how the support monies are to be distributed according to its regulations.

Ms. X further asserts that she has two other children that she must support. They are both younger than B. Civil Rule 90.3 allows a reduction in support for subsequent children only if they would suffer a "substantial hardship" in the absence of a reduction.<sup>18</sup> Ms. X asserted only that she has other children to support. She did not present evidence that her younger children would experience a "substantial hardship," so she is not entitled to a reduction in the support amount on the basis of having other children.

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<sup>13</sup> \$50 x 115% = \$57.50.

<sup>14</sup> 15 AAC 125.321(d). In this case, the notice was issued on October 24, 2012. Exh. 5.

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

<sup>16</sup> Exh. 10 at pgs. 4 & 8.

<sup>17</sup> Exh. 9.

<sup>18</sup> See Civil Rule 90.3, Commentary VI.B.2.

Finally, Ms. X presented evidence that she was awarded temporary custody of B on January 10, 2013. She also claimed that she is pursuing a permanent change in custody of B. Mr. J did not challenge the fact that Ms. X was awarded temporary custody of B. He only testified that he was planning to file a motion to modify the custody award entered by the court in the DV action. However, until Mr. J obtains a court order changing the DVO's award of custody to Ms. X, CSSD is obligated to follow the order currently in place. That order placed B with Ms. X on January 10, 2013, so Ms. X's ongoing child support should be suspended as of that date. Of course, in the event the court returns custody of B to Mr. J, CSSD will be obligated to re-activate Ms. X's ongoing child support amount that is set forth in this Decision and Order.

#### **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. Ms. X's modified ongoing child support amount has been accurately recalculated at \$239 per month for one child. This figure is correct and should be adopted, effective November 1, 2012.

Ms. X was awarded temporary custody of B on January 10, 2013. Thus, the ongoing support amount should be suspended as of that date. In the event the court returns custody of B to Mr. J while she is still a minor, CSSD may once again collect ongoing support from Ms. X as necessary.

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

- Ms. X is liable for modified ongoing child support for B in the amount of \$239 per month, effective November 1, 2012, and ongoing;
- Ms. X's ongoing support is suspended as of January 10, 2013, so CSSD may collect for January 2013, but not for February 2013 and ongoing, unless required by subsequent court order;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated December 12, 2012, remain in full force and effect.

DATED this 14<sup>th</sup> day of February, 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 4<sup>th</sup> day of March, 2013.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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