

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

In the Matter of:)
)
S D. D) OAH No. 13-0047-CSS
) CSSD No. 001117158
_____)

DECISION AND ORDER

I. Introduction

The obligor, S D. D, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in Mr. D’s case on November 29, 2012. The obligee child is N, age 14.¹

The hearing was held on February 21, 2012. Mr. D did not appear. He was represented by his wife, K D, who participated telephonically and testified on his behalf. T S, the custodial parent, participated telephonically. Andrew Rawls, Child Support Specialist, who represented CSSD, participated in person.

After the hearing was held, Mr. D submitted his actual income information for 2012 and a copy of his most recent paystub.

Based on the evidence and after careful consideration, Mr. D’s child support obligation remains at \$439 per month through December 31, 2012, and then is modified to \$535 per month effective January 1, 2013, and ongoing.

II. Facts

A. Procedural Background

Mr. D’s child support obligation for N was modified to \$439 per month, effective July 1, 2011, in October 2011.² On October 4, 2012, Ms. S initiated a modification review.³ On October 11, 2012, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order, which requested their income information for the last two years.⁴ Mr. D did not respond to the Petition. On October 5, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. D’s ongoing child support at \$590 per month,

¹ Ex. 5.
² Ex. 1.
³ Ex. 2.
⁴ Ex. 3.

effective November 1, 2012.⁵ This child support amount was based upon the receipt of a PFD and estimated Alaska Department of Labor and Workforce Development income figures for a waste truck driver of \$41,620.80.⁶ Mr. D appealed on December 24, 2012, asserting that CSSD had used inflated income figures, and that he lost his job as a driver for No Name in May 2012, was unemployed for a period, and then was working for No Name as an on-call laborer until he lost that job in late November 2012.⁷ Prior to the hearing, CSSD filed an extract of Mr. D's earnings as reported to the Alaska Department of Labor and Workforce Development for the first three quarters of 2012.⁸

B. Material Facts

Mr. D was employed at No Name until May 2012. He then received unemployment payments until September 2012, when he obtained a part time job at No Name. He was not hired as a truck driver for No Name, but instead was hired for an on-call position for which he performed various duties and was paid \$18 per hour. Mr. D was laid off from No Name at the end of November 2012 due to a lack of work. He did not file for unemployment.⁹ His total gross income for 2012, including wages, unemployment, and PFD, was \$26,351.25. His adjusted annual (net) income for child support purposes would therefore have been \$22,540.17, which would have resulted in a monthly child support payment of \$376 for one child.¹⁰

Mr. D was rehired at No Name on a salaried basis on January 5, 2013. His gross salary per wage period was \$1,440.¹¹ There is a factual discrepancy in the record. Ms. D testified that Mr. D is paid twice a month, which would mean that he would be paid \$1,440 per pay period for 24 pay periods per year. However, the pay stub supplied by Mr. D is for the time period from January 19, 2013 through February 1, 2013, a fourteen day period, instead of the fifteen or sixteen day period which would have been present if he were being paid twice monthly.¹² Additionally, Mr. D began working for No Name again on January 5, 2013, and the pay stub supplied by Mr. D indicates that his gross pay to date, as of the pay period ending February 1,

⁵ Ex. 5.

⁶ Ex. 5, p. 6.

⁷ Ex. 6.

⁸ Ex. 7.

⁹ K D testimony.

¹⁰ Ex. 9. These figures were calculated by CSSD post-hearing using the 2012 W-2s submitted by Mr. D after the hearing. Those W-2s are marked in the record as Exhibit B.

¹¹ See paystub dated February 11, 2013, which was submitted by Mr. D after the hearing. It is marked in the record as Exhibit A.

¹² Ex. A.

2013, was for \$2,880, which accounts for two pay periods.¹³ If Mr. D had been hired on January 5, 2013, and paid twice per month, he would not have earned a salary for two full pay periods as of the pay period ending February 1, 2013. It is therefore more likely true than not true that Mr. D is paid \$1,440 every two weeks, which means that he would have 26 pay periods per year.

Using the gross income figure of \$1,440 per two week pay period and an estimated PFD of \$878, CSSD calculated that Mr. D's estimated gross income for 2013 would be \$38,318 with a resultant child support obligation of \$535 per month.¹⁴

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁵ CSSD increased Mr. D's support amount from \$439 to \$590 per month, based upon its assumption that he was earning \$41,620.80 a year as a waste truck driver in 2012. Mr. D, however, was not working as a waste truck driver and after the hearing supplied information that establishes his total 2012 income would result in a monthly child support amount of \$376. Accordingly, a calculation of \$590 per month is incorrect.

The question then arises as to whether the calculation of \$376 per month is correct. If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that a "material change in circumstances" has been established and the order may be modified. Mr. D's child support has been \$439 per month since CSSD issued a modification order in October 2011. Thus, a child support calculation that is \$65.85 more or less than \$439 would be sufficient to warrant modification in this case.¹⁶ However, the difference between \$439 and \$376 is \$63, which does not quite reach the 15% change threshold of \$65.85. Accordingly, Mr. D's child support obligation should remain unmodified, at \$439 per month, through December 31, 2012, the end of the calendar year.

Mr. D supplied information at the hearing showing that his income had changed effective January 5, 2013, and that he would be receiving \$38,318 for the year. Under CSSD's calculations, this would result in Mr. D being liable for child support in the amount of \$535 per month. The difference between \$535 and \$439 is \$96, which is more than a 15% change from

¹³ Ex. A.
¹⁴ Ex. 10.
¹⁵ AS 25.27.190(e).
¹⁶ $\$439 \times .15 = \65.85 .

the previous child support amount of \$439. Accordingly, Mr. D's child support obligation should be modified to \$535 per month effective January 1, 2013.¹⁷

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. D's child support obligation should remain at \$439 per month through December 31, 2012, and then be modified to \$535 per month effective January 1, 2013, and ongoing. The support amount was calculated pursuant to Civil Rule 90.3 without variation under Civil Rule 90.3(c).

V. Child Support Order

- Mr. D's child support remains at \$439 per month through December 31, 2012;
- Mr. D is liable for modified ongoing child support for N in the amount of \$535 per month, effective January 1, 2013, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated November 29, 2012, remain in full force and effect.

DATED this 22nd day of March, 2013.

Signed

Lawrence A. Pederson
Administrative Law Judge

¹⁷ Typically, a child support modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested. 15 AAC 125.321(d). Accordingly, Mr. D's child support *could* be modified on or after November 1, 2012. *See* Exh. 4. However, his 2012 income does not warrant modification. Rather, Mr. D's estimated 2013 income does result in a support amount more than 15% higher than the previous figure, so his order may be modified effective January 1, 2013.

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 8th day of April, 2013.

By: Signed
Signature
Lawrence A. Pederson
Name
Administrative Law Judge
Title

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