

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

In the Matter of:)

K C. Q)

OAH No. 13-0491-CSS

CSSD No. 001157722

DECISION AND ORDER

I. Introduction

K C. Q is appealing a Modified Administrative Child Support and Medical Support Order that CSSD issued in his case on March 22, 2013. The child in this case is K, who is 5 years of age. The other party is B M. L.

The hearing was held on May 1, 2013, with record closure occurring on May 17, 2013. Mr. Q participated by telephone. Ms. L was contacted by telephone prior to the hearing but chose not to appear or participate. Russell Crisp, Child Support Specialist, represented CSSD.

Based on the record as a whole and after due deliberation, the Modified Administrative Child Support and Medical Support Order dated March 22, 2013 is affirmed. Mr. Q is liable for modified ongoing child support in the amount of \$50 per month, effective March 1, 2013, and ongoing.

II. Facts

Mr. Q's child support obligation for K was previously set at \$226 per month.¹ In response to Mr. Q's contact with CSSD's prison outreach program, CSSD initiated a modification review on his behalf. On February 12, 2013, CSSD issued a notice of the request for modification,² and subsequently issued the Modified Administrative Child Support and Medical Support Order. That order set Mr. Q's modified ongoing child support at \$50 per month, based on his long term incarceration.³ Mr. Q appealed.⁴

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.

III. Discussion

The material facts of this case are not in dispute. Simply stated, Mr. Q is incarcerated on a long-term basis and is not scheduled to be released until 2015. He is challenging the \$50 per month order because he does not want his child support lowered from the prior order of \$226 per month. In essence, he believes his child support obligation should not be \$50 per month, but should remain as previously calculated. Mr. Q is over \$60,000 in arrears in three cases.⁵

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁶ If the newly calculated child support amount is more than 15% higher or lower than the previous support amount, Civil Rule 90.3(h) assumes “material change in circumstances” has been established and the order may be modified.

Civil Rule 90.3(a)(1) provides that a parent’s child support amount is to be calculated based on his or her “total income from all sources.” If the parent is incarcerated and does not have any income, the child support is set at \$50 per month. This is the minimum amount allowed under Alaska law, and it may not be reduced below that figure.⁷ The \$50 per month minimum order has been upheld by the Alaska Supreme Court, which stated that a non-custodial parent may lack the present ability to pay an ongoing child support amount, and may even be indigent due to incarceration, but those facts will not excuse the child support obligation.⁸

Mr. Q argues, in essence, that Civil Rule 90.3 only dictates what the *minimum* child support amount should be for an incarcerated individual and does not actually require that the support amount be set as low as \$50. Even though Mr. Q is incarcerated and does not have the ability to seek work outside of the prison, he claims that his child support should not be lowered. He insists that his obligation to pay support should be an amount based on his ability to pay, as reflected in his previous child support order, and not based on the fact that he is incarcerated. The obligor also asserts that CSSD did not actually perform an income analysis in his case because he is incarcerated and that fact alone should not be the determinative factor in his child support obligation. Finally, Mr. Q testified that his child support payment is a moral obligation, and that he is a member of a group that is advocating eliminating the \$50 per month minimum order on that basis.

⁵ CSSD’s Submission to Record dated May 15, 2013, at pg. 1.

⁶ AS 25.27.190(e).

⁷ Civil Rule 90.3(c)(1)(B).

⁸ *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

In response to Mr. Q's argument, CSSD maintains that the obligor's child support should remain at \$50 per month because the amount is calculated based on his actual income from all sources and that it reflects his ability to pay.

Mr. Q's objection to the child support amount of \$50 per month is to be commended, but his request to have his monthly obligation based on his prior income cannot be granted. Civil Rule 90.3(a)(1) clearly states that an obligor parent's child support should be calculated based on his or her "total income from all sources." The commentary to the Rule adds that the income figure to be used is that "which will be earned when the support is to be paid."⁹ Mr. Q is incarcerated on a long-term basis and is not working, nor does he have any possibility of working. Due to his lack of income, a child support calculation in the minimum amount of \$50 per month is correct. When he is released from prison, Mr. Q will be free to voluntarily increase his child support payments if he is able.

IV. Conclusion

Mr. Q did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. Mr. Q is incarcerated and does not have any earned income. As a result, his child support should be set at \$50 per month and the modified order should be affirmed.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated March 22, 2013 is affirmed – Mr. Q is liable for child support for K in the amount of \$50 per month.

DATED this 6th day of June, 2013.

Signed

Kay L. Howard
Administrative Law Judge

⁹ Civil Rule 90.3, Commentary E.

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 24th day of June, 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.]