

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

IN THE MATTER OF: )

S C. S )

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) OAH No. 13-0519-CSS

) CSSD No. 001107533

**DECISION AND ORDER**

**I. Introduction**

The obligor, S C. S, appealed the March 21, 2013 denial by the Child Support Services Division (CSSD) of his request for modification of his child support order. The obligee child is Q, 12. The other party is S E. N. The hearing was held on May 1, 2013. Both parties participated by telephone. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after due deliberation, CSSD's Decision on Request for Modification Review is vacated and Mr. S's child support obligation is modified to \$199 per month, effective March 1, 2013.

**II. Facts**

*A. Procedural History*

Mr. S's child support obligation for Q was set at \$522 per month in April 2012.<sup>1</sup> Mr. S requested a modification review on January 28, 2013, and CSSD notified Ms. N of the request on February 7, 2013.<sup>2</sup> Mr. S provided his 2012 income tax return and on March 21, 2013, CSSD denied his petition for modification.<sup>3</sup> Mr. S appealed, claiming he no longer earns his previous income and he has a child in the home to support.<sup>4</sup>

*B. Material Facts*

Mr. S previously worked in the oilfield and construction industries. In 2012, he was employed by two separate insulation companies, but he was laid off from both toward the end of 2012 and is currently unemployed. He cannot return to those jobs or obtain other employment

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<sup>1</sup> Exh. 1.

<sup>2</sup> Exh. 3.

<sup>3</sup> Exh. 4.

<sup>4</sup> Exh. 6.

paying a similar salary because he is a convicted felon and his driver's license has been suspended until the year 2031. He may be able to get it back in 2015 when his probation is completed, but that is not guaranteed. Mr. S is currently receiving unemployment benefits, but those are set to expire in the near future. He earned \$36,919 in 2012.<sup>5</sup> He receives \$314 per week, which is garnished by CSSD for his child support cases, which leaves him with about \$212 per week.<sup>6</sup>

Mr. S lives with his mother and his son, O, who is 7. Mr. S obtained custody of O during the summer of 2012 after the child was removed from his mother's custody. Mr. S does not have the resources to support O unless they live with Mr. S's mother. The obligor helps his mother around the house and may receive free room and board for himself and O.

Mr. S reports that he is a recovering alcoholic with over three years of sobriety. He has the support of several friends and family members, including an adult daughter, who wrote letters on his behalf.<sup>7</sup> Mr. S claims that the ongoing stress of this child support obligation, in addition to his child support case for older children, is "seriously affecting my emotional, mental and physical health as well as affecting the quality of my sobriety."<sup>8</sup> As of the end of January 2013, Mr. S was in arrears on all of his child support cases in excess of \$54,000.<sup>9</sup>

### **III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>10</sup> If a 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. As the person who filed the appeal in this case, Mr. S has the burden of proving by a preponderance of the evidence that CSSD issued the Decision on Request for Modification Review in error and that his child support should, in fact, be modified.<sup>11</sup>

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<sup>5</sup> Exh. 4 at pg. 1.

<sup>6</sup> See Exh. 8 at pg. 1.

<sup>7</sup> See Exh. 7.

<sup>8</sup> Exh. 7 at pg. 3.

<sup>9</sup> Mr. S's documents received on May 13, 2013, at page 8.

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> 15 AAC 05.030(h).

A. *Child Support Calculation*

For the modification review, CSSD reviewed Mr. S's 2012 tax return that showed his gross 2012 income was \$41,181, including the PFD and unemployment benefits.<sup>12</sup> CSSD calculated a child support amount of \$550 from this information.<sup>13</sup> Based on this number, CSSD denied the petition for modification because the calculated child support amount did not reach the 15% minimum change needed to warrant modification.<sup>14</sup>

Mr. S is challenging the denial of his petition for modification because he was laid off from both jobs where he earned his income in 2012. He claims being re-hired is not possible at either one and, because his driver's license is suspended, he cannot obtain work elsewhere that pays anything like his previous earnings. He added that if he is able to get a job, he would have to rely on others to provide transportation, which is practically impossible on a long-term basis.

Based solely on his 2012 income, CSSD's calculation is correct. However, the division did not take into account the fact that Mr. S's driver's license is suspended until at least 2015, and that he cannot legally drive. In a small rural Alaska community with little or no public transportation, the loss of a driver's license is a significant impediment to employment, especially since Mr. S previously worked for employers who required him to drive. For Mr. S, the loss of his driver's license is a "material change in circumstances" and this should be considered a factor in estimating his annual income and ability to pay child support.

Even though he does not currently have a driver's license, Mr. S should be able to secure some sort of employment, even if it's at a fast food restaurant paying the minimum wage of \$7.75 per hour for 35 hours of work per week. This equals annual income in the amount of \$14,105.<sup>15</sup> When the PFD of \$878 is added,<sup>16</sup> it equals estimated annual income of \$14,983, which yields a child support amount of \$199 per month for one child.<sup>17</sup> Mr. S's child support cannot be calculated from his unemployment benefits because they are temporary and CSSD

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<sup>12</sup> Exh. 4.

<sup>13</sup> Exh. 5 at pg. 3.

<sup>14</sup> Mr. S's prior child support amount was \$522 per month for one child. A reduction to \$444 would have been necessary to trigger the 15% minimum change ( $\$522 \times .85 = \$443.70$ ).

<sup>15</sup>  $\$7.75 \text{ per hour} \times 35 \text{ hours per week} \times 52 \text{ weeks per year} = \$14,105$ .

<sup>16</sup> The 2012 PFD of \$878 is the most recent dividend distribution and should be used until the 2013 figure is announced, as usual, in September.

<sup>17</sup> See Attachment A. This figure includes a deduction from income for the \$115 in support he pays for an older child, K, who is 16.

indicated his were due to expire soon. It is reasonable to expect Mr. S to find *some* employment that pays the minimum wage. If it is too far from his home for him to walk or ride a bicycle, Mr. S has the support of friends who have been helping him thus far.

Mr. S is to be applauded for the efforts he has made to get clean and sober and to stay sober for longer than three years. That is quite an accomplishment and it is hoped that Mr. S will continue to utilize the tools of a program of recovery. Mr. S has expressed a significant disagreement with CSSD concerning his child support arrears. Yet by law, CSSD cannot make all of the changes that he is requesting. Specifically, CSSD cannot retroactively change his arrears because he was in prison a few years ago. He would have had to file a petition for modification *at that time*. Since it appears that he did not, CSSD is prevented by both state and federal law from going back in time and reducing his child support in the past.<sup>18</sup>

#### **IV. Conclusion**

Mr. S met his burden of proving by a preponderance of the evidence that CSSD's Decision on Request for Modification Review that denied modification was issued in error. Mr. S has the ability to pay support of \$199 per month, based on the minimum wage. This calculation should be adopted, effective March 1, 2013.

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

- CSSD's Decision on Request for Modification Review dated March 21, 2013 is vacated;
- Mr. S's child support obligation for Q is modified to \$199 per month, effective March 1, 2013, and ongoing;
- All other provisions of the prior order in effect in Mr. S's case, the Modified Administrative Child Support and Medical Support Order dated April 16, 2012, remain in full force and effect.

DATED this 11<sup>th</sup> day of June, 2013.

Signed  
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Kay L. Howard  
Administrative Law Judge

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<sup>18</sup> See Civil Rule 90.3(h)(2) ("Child support arrearage may not be modified retroactively . . . .").

**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 28<sup>th</sup> 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.]