

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

In the Matter of :

D A. P

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OAH No. 13-0606-CSS  
CSSD No. 001128679

**DECISION AND ORDER**

**I. Introduction**

The obligor, D A. P, appealed a Response to Request for Modification Review that the Child Support Services Division (CSSD) issued in his case on April 12, 2013. The response denied his request for modification review of the child support amount set in January 2013. The obligee child is K, 11. The custodial parent is M B.

The hearing was held during several sessions beginning on May 22, 2013. Both parties appeared telephonically throughout the process. Andrew Rawls, Child Support Specialist, represented CSSD. Final record closure was on August 14, 2013. The hearings were recorded.

Based on the evidence and after careful consideration, CSSD's Response to Request for Modification Review is affirmed. There has been no showing of a material change in circumstances sufficient to modify Mr. P's child support, which shall remain at \$1,112 per month.

**II. Facts**

*A. Procedural Background*

Mr. P's ongoing child support obligation for K was set at \$1,112 per month in January 2013.<sup>1</sup> On March 15, 2013, he initiated a modification review.<sup>2</sup> On March 28, 2013, CSSD sent him a request for proof of his change in circumstances.<sup>3</sup> He did not provide the information in a timely manner, so CSSD sent him a Response to Request for Modification Review on April 12, 2013.<sup>4</sup> Mr. P filed a letter requesting an administrative hearing on April 18, 2013, asserting that his job had changed and he was earning significantly less than before.<sup>5</sup>

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3. CSSD does not have a copy of its request; this screen print illustrates the type of document sent to him.  
<sup>4</sup> Exh. 4. Again, this is not a copy of the document, just a screen print that illustrates CSSD's written response.  
<sup>5</sup> Exh. 7.

*B. Material Facts*

Mr. P and Ms. B are the parents of K, 11. K lives full-time with Ms. B.

Mr. P previously was employed as a No Name for No Name Alaska, Inc., where he has worked since June 2008.<sup>6</sup> At the beginning of 2013, he was earning \$37.50 per hour and \$56.25 per hour for overtime on a three week on, three week off rotation.<sup>7</sup> Soon thereafter, No Name lost a contract and the entire workforce was reorganized. As a result, Mr. P lost his job as a no name and was reassigned to an entry level position doing tank maintenance.<sup>8</sup> He did not work from February 20<sup>th</sup> through March 17<sup>th</sup>.<sup>9</sup> Upon his return to work, Mr. P's schedule was three weeks on, two weeks off,<sup>10</sup> and his hourly wage was \$27.75 per hour for straight time and \$41.63 for overtime.<sup>11</sup> The Alaska Department of Labor and Workforce Development reported he received \$21,239.91 during the first quarter of 2013, which ended on March 31<sup>st</sup>.<sup>12</sup> From then until May 19, 2013, Mr. P had gross earnings of \$36,171.07.<sup>13</sup>

On August 7, 2013, CSSD was directed to prepare a new estimate of Mr. P's 2013 income and a revised draft child support calculation. Because of the earlier delay in obtaining pay documents from Mr. P's employer, his earnings from the second quarter of 2013 had already been reported to the Alaska Department of Labor and Workforce Development. During the second quarter, Mr. P received \$20,019.29.<sup>14</sup> CSSD estimated that he would earn the same amount during the third and fourth quarters, making his total estimated earnings for 2013 to be \$81,297.78.<sup>15</sup> This is the best estimate of Mr. P's expected earnings in 2013.<sup>16</sup> When inserted

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<sup>6</sup> Some of the facts in this decision are taken from the Decision and Order in Mr. P's previous appeal, *In the Matter of D A. P.*, OAH No. 12-0746-CSS (Dept. of Revenue January 2013), p.2, hereinafter, "January 2013 decision."

<sup>7</sup> Exh. 5 at pg. 9.

<sup>8</sup> Exh. 5 at pg. 2.

<sup>9</sup> *Id.*

<sup>10</sup> Exh. 7.

<sup>11</sup> *Id.* See also Exh. 5 at pg. 13.

<sup>12</sup> Exh. 9.

<sup>13</sup> Exh. 6 at pg. 6.

<sup>14</sup> Exh. 9. CSSD stated in its Second Submission to Record that the amount he received in the second quarter was \$2,019.29, but from the Alaska Department of Labor and Workforce Development figures, CSSD's number obviously omitted one of the zeros.

<sup>15</sup> Exh. 11.

<sup>16</sup> CSSD also prepared an estimate of Mr. P's total 2013 earnings based on an average of his paystubs dated from April 7<sup>th</sup> through May 19<sup>th</sup>, and this method results in a child support amount of \$1,007 per month. See Exh. 10 at pgs. 1-2. This method does not appear to be as reliable as the estimation based on his quarterly earnings, which utilize a full three months' worth of income.

into CSSD's child support calculator, it results in a child support amount of \$1,015 per month.<sup>17</sup> This is \$97 less than the \$1,112 child support amount set in January 2013.

### **III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>18</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. Mr. P's child support has been \$1,112 per month since January 2013. Thus, a child support calculation would have to be at least \$166.80 less than that figure, or \$945.20, in order to warrant modification in this case.<sup>19</sup>

In this case, CSSD declined to perform a modification review because Mr. P did not timely submit income information. The agency referred his subsequent appeal to the Office of Administrative Hearings (OAH), whereupon several sessions of a hearing were held and Mr. P was afforded ample opportunity to prove by a preponderance of the evidence that he has had a material change in circumstances. With his earnings having been reported by the Alaska Department of Labor and Workforce Development through the second quarter of 2013, CSSD's estimate of his total 2013 income was relatively straightforward. Depending on the methodology used to estimate Mr. P's income, the resulting child support amount ranged from \$1,007 to \$1,105 per month. Neither figure was low enough to meet the \$945.20 per month amount that would be sufficient to warrant a modification of Mr. P's current child support obligation of \$1,112 per month.

### **IV. Conclusion**

Mr. P did not meet his burden of proof in this appeal. He did not show by a preponderance of the evidence that CSSD's Response to Request for Modification Review was incorrect. There has not been a "material change in circumstances" sufficient to modify his child support order from the current amount of \$1,112 per month. CSSD's order should be affirmed.

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

- CSSD's Response to Request for Modification Review is affirmed;
- Mr. P's child support for K remains at \$1,112 per month;

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<sup>17</sup> Exh. 11.

<sup>18</sup> AS 25.27.190(e).

<sup>19</sup>  $\$1,112 \times 15\% = \$166.80$ .  $\$1,112 - \$166.80 = \$945.20$ .

- All other provisions of the prior order issued by CSSD – the Modified Administrative Child Support and Medical Support Order dated October 8, 2012, remain in full force and effect.

DATED this 16<sup>th</sup> day of August, 2013.

Signed  
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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 12<sup>th</sup> day of September, 2013.

By: Signed  
\_\_\_\_\_  
Signature  
Angela M. Rodell  
\_\_\_\_\_  
Name  
Acting Commissioner  
\_\_\_\_\_  
Title

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