

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

IN THE MATTER OF: )

O O. S )

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) OAH No. 13-0653-CSS

) CSSD No. 001162736

**DECISION AND ORDER**

**I. Introduction**

The custodian, K A. T, disputes the Child Support Services Division's (CSSD's) Modified Administrative Child Support and Medical Support Order issued April 24, 2013. This order reduced obligor O O. S's monthly child support for two of his eight children from \$1,042 to \$639 per month effective April 1, 2013. Ms. T appealed, contending Mr. S was intentionally withholding income information and interfering with CSSD's efforts to establish child support. Ms. T established that it was more likely than not that the April 2013 calculation understated Mr. S's income for purposes of child support. Mr. S established that he had six children from a prior relationship in his home. The obligee children are A, age 8, and B, age 4. Five of Mr. S's remaining six children are older than A, and one is older than B. Because of the birth order of the two obligee children and Mr. S's other children, the child support calculated in this proceeding cannot be obtained from a simple two-child support calculation.

The record was reopened and CSSD was instructed to recalculate child support based on Mr. S's actual 2012 income from his Federal tax return. Mr. S's current income results in a child support amount of \$933.19, which is less than the 15% change required to modify a child support amount. Mr. S's child support may not be modified at this time, so it shall remain at \$1,042 per month for two children.

**II. Facts**

In April 2011, Mr. S and Ms. T consented to Mr. S paying \$1,042 per month for A and B, effective December 1, 2011.<sup>1</sup> Ms. T petitioned for modification and on April 24, 2013 a Modified Administrative Child Support and Medical Support Order was issued reducing Mr. S's

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<sup>1</sup> Exhibit 4.

support obligation to \$639 per month effective April 1, 2013.<sup>2</sup> CSSD calculated Mr. S's child support using a simple two-child support calculation and basing Mr. S's income on his reported 2012 third and fourth quarter wages, extrapolated, and any Arctic Slope Native Corporation dividend as well as the Alaska Permanent Fund dividend.<sup>3</sup> Ms. T appealed, contending that Mr. S's income was understated because it did not include all of his revenue sources.<sup>4</sup>

At hearing, Ms. T testified regarding what she had heard about Mr. S's efforts to help employees hide income, thereby allowing the employees to avoid increases to their child support obligations. Mr. S's unwillingness to comply with his legal obligation to provide his income information delayed resolution of this matter.<sup>5</sup> Ms. T's dissatisfaction is well taken.

After receiving Mr. S's 2012 tax return and supporting schedules, CSSD revised its calculation to reflect gross income for purposes of child support amounting to \$102,698, and information regarding the existence of Mr. S's six other children, some older and some younger than the obligee children.

Post-hearing, Mr. S submitted an explanation of the amounts expensed, including those found on Schedule C at Line 23.<sup>6</sup> His explanation identified which taxes reported at line 23 were the employees' taxes and which were company taxes. Under the Internal Revenue's 2012 instructions for Schedule C at Line 23, an employee's Federal withholding is not deductible on this line and schedule.<sup>7</sup> Using the information provided by Mr. S, his Line 23 disallowed taxes totaled \$19,706.04.<sup>8</sup> For purposes of child support, Mr. S's deductible taxes total \$10,074.85. Therefore, Mr. S's 2012 tax return and supporting schedules result in a total gross income for purposes of child support in the amount of \$91,746.04.<sup>9</sup> It is this figure that should be used to calculate the child support owing in this proceeding.<sup>10</sup>

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<sup>2</sup> Exhibit 1; Exhibit 6.

<sup>3</sup> Exhibit 6 at 6.

<sup>4</sup> Exhibit 7.

<sup>5</sup> 15 AAC 125.040; 15 AAC 125.321.

<sup>6</sup> Exhibit 11 at 8.

<sup>7</sup> <http://www.irs.gov/instructions/i1040sc/ch02.html#d0e840> (8/6/13).

<sup>8</sup> Exhibit 11 at 8. All tax identified as an employee tax is included in this amount as a disallowed deduction from income for purposes of child support.

<sup>9</sup> Taxable Income = \$84,445.04; Non-Taxable Income = \$7,301; Interim Order Reopening the Record for Additional Calculations (August 7, 2013).

<sup>10</sup> Interim Order Reopening the Record for Additional Calculations (August 7, 2013).

### III. Discussion

Modification of child support orders may be made upon a showing of “good cause and material change in circumstances.”<sup>11</sup> If the newly calculated child support amount is less than 15% higher or lower than the previous order, the Rule considers that a material change in circumstances has not necessarily occurred and CSSD is not required to modify the existing child support order.<sup>12</sup>

Mr. S’s child support obligation was set at \$1,042 per month on April 11, 2012. After Ms. T requested modification, CSSD prepared a child support calculation for the two obligee children of \$639 per month.<sup>13</sup> However, this number was obtained from a simple child support calculation and understated Mr. S’s income for purposes of child support. At the time of its calculation, CSSD was not informed that Mr. S had other children: five older than A, and one younger than A but older than B.

Civil Rule 90.3(a)(1)(C) and (D) provide that a parent who pays support for a prior child or who supports a prior child in the home is entitled to a deduction from the parent’s income in calculating the support obligation for a younger child. Five children are older than A, so Mr. S is entitled to a deduction from his income in A’s child support calculation for supporting these older children. He is entitled to a deduction for the five older children of a prior relationship living with Mr. S in the amount of \$2,236 per month. After adjusting Mr. S’s income for purposes of calculating child support for A, his monthly support obligation for A is \$699 per month. The deduction for the child residing with Mr. S that is “sandwiched” between A and B is calculated as 3% of Mr. S’s adjusted income including an adjustment for supporting A. B is entitled to monthly support calculated as 7% of Mr. S’s income adjusted for the older six children, or \$234.19. When added together, this yields a child support amount for two children, A and B, of \$933.19 per month.<sup>14</sup> It is \$108.81 less than the current order, which constitutes a 10.4% change from \$1,042 per month. Since this number does not meet the 15% change necessary, CSSD is not required to modify Mr. S’s child support for A and B downward to \$933.19 per month.

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<sup>11</sup> AS 25.27.190(e).

<sup>12</sup> Civil Rule 90.3(h).

<sup>13</sup> Exhibit 1; Exhibit 6.

<sup>14</sup> See Attachment A and Exhibit 13A – D (Support Calculations and Methodology).

**IV. Conclusion**

Mr. S’s gross income for purposes of child support is \$92,627. When his obligation for A and B is calculated under Alaska Rule Civil Procedure 90.3(a), Mr. S’s monthly child support obligation is \$1,042 effective April 1, 2013.

**V. Order**

- O O. S’s monthly support obligation for A and B is \$1,042, based on Civil Rule 90.3(a), effective April 1, 2013.
- All other provisions of the Modified Administrative Child Support and Medical Support Order issued April 24, 2013 remain in full force and effect.

DATED this 3<sup>rd</sup> day of September, 2013.

By: Signed  
 Rebecca L. Pauli  
 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 23<sup>rd</sup> day of September, 2013.

By: Signed  
 Signature  
 Rebecca L. Pauli  
 Name  
Administrative Law Judge  
 Title

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