

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

IN THE MATTER OF: )

N C. U )

---

) OAH No. 13-1233-CSS

) CSSD No. 001132325

**DECISION AND ORDER**

**I. Introduction**

The obligor, N C. U, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on August 7, 2013. The obligee child is L, 10. The custodial parent is K R. T.

The hearing was held on September 30, 2013 and October 29, 2013. Mr. U appeared by telephone at the first hearing; Ms. T indicated before the first hearing that she did not wish to participate. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded. Final record closure was on December 10, 2013.

Based on the evidence and after careful consideration, Mr. U' child support is modified to \$989 per month for one child, effective June 1, 2013, and ongoing.

**II. Facts**

Mr. U' child support obligation for L was established in 2007 and modified to \$429 per month in May 2012.<sup>1</sup> He requested another modification in May 2013.<sup>2</sup> On May 15, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. U submitted one paystub, and on August 7, 2013, CSSD issued a Modified Administrative Child Support and Medical Support Order setting his ongoing child support at \$876 per month, effective June 1, 2013.<sup>4</sup> Mr. U appealed.

At the first hearing, Mr. U testified he formerly worked for No Name, Inc., but was terminated from that job in mid-2013. He said he was then hired as a science support and logistics laborer by No Name, LLC, where he earns \$30 per hour for a 40-hour work week.

---

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

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

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

<sup>4</sup> Exh. 5.

After the hearing, CSSD was tasked with providing an up-to-date calculation based on Mr. U' combined estimated income for the two companies for 2013. CSSD filed earnings information from the Alaska Department of Labor and Workforce Development that indicates Mr. U earned \$54,972.49 through the third quarter of 2013, divided between three employers: \$4,666.40 from No Name Group, \$34,629.84 from No Name, Inc., and \$15,676.25 from No Name, LLC.<sup>5</sup>

CSSD used the Department of Labor information to estimate Mr. U' total earnings from employment at \$65,451.09.<sup>6</sup> To arrive at this figure, CSSD determined Mr. U earned an average of \$1,165 per week from No Name, LLC, which would total \$15,145 for the remaining 13 weeks of the year. CSSD added this amount to his year-to-date income of \$15,676.25 from the company, arriving at a year-end total of \$30,821.25 from No Name, LLC.<sup>7</sup> CSSD then added his prior 2013 earnings from his other employers to reach the total estimated earnings figure. CSSD also included in Mr. U' income a \$5,000 distribution in 2013 from the No Name (NN). CSSD calculated a child support amount from these total income figures of \$914 per month.<sup>8</sup>

The second hearing was scheduled at Mr. U' consent to review CSSD's calculation and get his feedback on the new draft support amount. Mr. U did not participate in the hearing – he could not be reached by telephone and he has not contacted the Office of Administrative Hearings (OAH) since then.

After the second hearing, CSSD was asked to provide evidence of Mr. U' NN membership. CSSD indicated that Ms. T had informed the agency that Mr. U is a member of the corporation and that he has not contested being a member.<sup>9</sup> Since Mr. U failed to appear at the second hearing and did not subsequently contact the OAH, CSSD's inclusion of NN dividends in Mr. U' income was accepted in an Interim Order issued on November 26, 2013. That order also addressed other evidence filed by CSSD that suggested the obligor's 2013 Native corporation dividend would be \$10,000, not \$5,000, due to a special distribution announced by the NN board on October 00, 2013.<sup>10</sup> CSSD was asked to file yet another calculation that included the total dividend Mr. U is expected to receive from NN. CSSD filed the calculation on December 10,

---

<sup>5</sup> Exh. 13.

<sup>6</sup> Exh. 14.

<sup>7</sup> See CSSD's Notice of Filing Calculations dated October 17, 2013.

<sup>8</sup> *Id.*

<sup>9</sup> See CSSD's Submission to Record dated November 7, 2013.

<sup>10</sup> See Exh. 12.

2013 with the only change being the increased dividend amount; the resulting child support figure is \$989 per month.<sup>11</sup>

### III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>12</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. U’ child support has been \$429 per month since May 2012. Thus, a child support calculation of \$493.35 or more would be sufficient to warrant modification in this case.<sup>13</sup>

A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective on June 1, 2013.<sup>14</sup> As the person who filed the appeal, Mr. U has the burden of proving by a preponderance of the evidence that CSSD’s modified child support order was incorrect.<sup>15</sup>

Civil Rule 90.3(a)(1) provides that an obligor’s child support amount is to be calculated based on his or her “total income from all sources,” minus mandatory deductions such as taxes and Social Security. A parent’s total income specifically includes dividends.<sup>16</sup>

In this case, CSSD modified Mr. U’ child support to \$876 per month for one child, based on the agency’s initial estimation of his total 2013 income. However, during the hearing process, that child support amount had to be recalculated after additional information was filed regarding Mr. U’ income and his Native corporation dividends from NN. CSSD’s latest estimate of Mr. U’ total income for 2013 appears to be correct. As a result, the child support amount of \$989 is correctly calculated. Mr. U has not participated since the first hearing, so no additional evidence has been received from him.

Mr. U testified during the first session of the hearing that he supports his fiancé, T, and their 3 year-old twins in the home. T has a degree in International Relations and was employed before the twins were born, but apparently she has not worked since then. Mr. U claimed on his appeal form that he had made payments to Ms. T from T’s bank account prior to May 2011.

---

<sup>11</sup> Exh. 14.

<sup>12</sup> AS 25.27.190(e).

<sup>13</sup>  $\$429 \times 115\% = \$493.35$ .

<sup>14</sup> 15 AAC 125.321(d). In this case, the notice was issued on May 15, 2013. Exh. 3.

<sup>15</sup> 15 AAC 05.030(h); 2 AAC 64.290(e).

<sup>16</sup> Civil Rule 90.3, Commentary III.A.6.

Since those claimed payments were made prior to June 1, 2013, the effective date of this modification, no credit can be given to him in this proceeding.<sup>17</sup>

Mr. U also stated in his appeal that he cannot afford the increased child support amount and that it should be lowered because of his cost of living in No Name. Since Mr. U did not participate in the second session of the hearing, evidence on this issue could not be obtained from him.

#### **IV. Conclusion**

Mr. U' child support obligation for L is correctly calculated at \$989 per month, effective June 1, 2013. This calculation is based on Mr. U' actual income in 2013, which has been extrapolated to the end of the year. Mr. U' arrears cannot be addressed in this modification because the payments he wants credit for occurred prior to the effective date of the modification. Also, his appeal suggested he has a financial hardship, but he did not appear at the second hearing to present any additional evidence. Thus, consideration of any additional issues must be denied.

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

- Mr. U is liable for modified ongoing child support for L in the amount of \$989 per month, effective June 1, 2013, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated August 7, 2013 remain in full force and effect.

DATED this 30<sup>th</sup> day of December, 2013.

*Signed* \_\_\_\_\_  
Kay L. Howard  
Administrative Law Judge

---

<sup>17</sup> Mr. U may be able to have these payments addressed by CSSD if he files a request with the agency.

**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 17<sup>th</sup> day of January, 2014.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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