

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

IN THE MATTER OF:)	
)	OAH No. 13-1577-CSS
H E. U)	CSSD No. 001182220
_____)	

DECISION AND ORDER

I. Introduction

This matter involves H E. U’s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on October 24, 2013. That agency decision added the child K, 1 year of age, to Mr. U’s child support order for C, 4, and K, 3, and modified his ongoing child support obligation. The other party to the case is M M. L.

The formal hearing was held on November 25, 2013. Both parties appeared by telephone. Russell Crisp, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. U’s child support is modified to \$426 per month for three children, effective October 1, 2013. Mr. U’s request for paternity disestablishment is denied as to C and K because he must pursue paternity disestablishment for them in court. CSSD is arranging genetic tests regarding K.

II. Facts

A. Procedural History

Mr. U’s child support for C and K was set at \$349 per month for two children in July 2012.¹ By notice dated September 6, 2013, CSSD initiated an “add-a-kid” modification to add K to the order for C and K.² Mr. U did not provide financial information. On October 24, 2013, CSSD issued a modification order that added K and set Mr. U’s ongoing child support at \$496 per month for three children, effective October 1, 2013.³ He appealed on November 4, 2013,

¹ Exh. 1.
² Exh. 3.
³ Exh. 4.

asserting that he is not the father of the children and that Ms. L has told him that he is not. Mr. U added that if Ms. L knows the paternity of the children, then she should be the one to prove it.⁴

B. Material Facts

Mr. U and Ms. L live in No Name, Alaska. CSSD established Mr. U's child support obligation at \$349 per month for two children in mid-2012. CSSD was not able to serve him with the order until January 2, 2013. He did not appeal that order.

Mr. U's last employment was in 2007. He worked 20-25 hours per week as a cashier and/or clerk for the No Name Native corporation, and was paid at the rate of \$9.60 per hour. He was fired following a disagreement with management. He has not had any subsequent work for an employer. Since then, Mr. U has earned some money in the Native art business carving and selling mammoth and fossilized ivory pieces. He minimized his success at this occupation, claiming the most he has made in one year was \$8,000. Mr. U also got a loan from his regional Native corporation to purchase gear for commercial fishing. He got all of the gear together for the 2013 season, but he made less than \$5,000. Mr. U also gets help from his family.

III. Discussion

Mr. U filed the appeal. He is challenging the income determinations CSSD used to calculate his child support obligation. But his primary issue on appeal concerns CSSD's denial of his request for genetic testing for C, K and K. As the party who filed the appeal, Mr. U has the burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order is incorrect.⁵

A. Paternity

CSSD's statutes provide that the agency may disestablish paternity of a child at the request of a party.⁶ However, disestablishment proceedings cannot be initiated for all of the children in CSSD's cases. CSSD may not process a disestablishment request for a child whose paternity was determined by court order, genetic tests, an acknowledgment of paternity executed by both parents, or an admission of paternity submitted by the alleged father in connection with a paternity action.⁷ In those cases, the paternity of the child is considered to be established, and as

⁴ Exh. 5.
⁵ 15 AAC 05.030(h).
⁶ AS 25.27.166(a).
⁷ AS 25.27.166(a).

a result, the party contesting paternity must file an action in the court in order to pursue paternity disestablishment.

In this case, at the request of the administrative law judge, CSSD reviewed records from the Bureau of Vital Statistics (BVS) that cannot be released. CSSD indicated Mr. U signed a two-party paternity affidavit for C that was processed on March 10, 2009, and he signed a two-party paternity affidavit for K that was processed on October 19, 2012.⁸ Therefore, under CSSD statute AS 25.27.166(a), Mr. U may not challenge his paternity of them before CSSD. Neither CSSD nor the administrative law judge has the authority to order paternity testing or initiate proceedings seeking to disestablish his paternity of C and K. If the obligor still wants to pursue an action to have his paternity of them disestablished, he will have to file an action in court to do so.

Mr. U may petition CSSD for genetic testing regarding K, however. It appears that there is no paternity affidavit on record with the BVS, so CSSD initiated establishment of Mr. U's paternity of K. He did not respond to the paternity action, so CSSD issued a default paternity order on November 6, 2013.⁹ CSSD has agreed to facilitate paternity testing regarding Mr. U's alleged paternity of K. If his paternity of her is subsequently disestablished, CSSD will cease collecting child support for K pursuant to its statutes and regulations.

B. Child Support

Child support orders may be modified upon a showing of "good cause and material change in circumstances." Adding another child to a support order is a material change in circumstance. In this case, CSSD has modified Mr. U's child support for the purpose of adding K to his previous order for C and K.

CSSD calculated Mr. U's modified child support at \$496 per month for three children because he did not submit any financial information and there are no wage records for him in the Alaska Department of Labor and Workforce Development database after 2007. Mr. U testified that he has supported himself with his Native art, a loan to start commercial fishing, and with help from his family. He was vague about his income from each of these endeavors, so it is not possible to calculate a child support amount from the imprecise information he provided. Thus,

⁸ CSSD's Submission to Record received on November 27, 2013.

⁹ Exh. 7. This document is not a copy of the order CSSD issued, but rather a copy of screen notes from CSSD's online case note system.

Mr. U has not met his burden of proving CSSD's Modified Administrative Child Support and Medical Support Order was incorrect.

However, CSSD's calculation should be adjusted somewhat. The division calculated Mr. U's modified child support based on full-time work of 2080 hours per year paid at his 2007 wage of \$9.60 per hour. But Mr. U was only a part-time worker in 2007. Furthermore, he lives in No Name, a village on the coast of Alaska with a predominantly Alaska Native population of about 000.¹⁰ In 2012, only 000 residents were employed, 00 of them full-time.¹¹ Given that Mr. U only worked part-time, CSSD should have used part-time earnings to calculate his modified child support.

In the alternative, CSSD could have merely increased Mr. U's child support to the three-child amount from the child support order already in place at the time. That order set child support for C and K at \$349 per month for two children.¹² Since Mr. U did not appeal that order, increasing his child support to the three-child amount using the same income figure would have been reasonable. Based on the income figure is the prior calculation, child support for three children would be \$5,113.45 per year, or \$426.12 per month, rounded to the nearest dollar amount of \$426 per month for three children. The two-child and one-child amounts remain the same as in CSSD's Exhibit 1 at page 7.

IV. Conclusion

Mr. U did not meet his burden of proving that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). He provided vague and imprecise income information that could not be used for a child support calculation. Rather, given the stale information provided by the Alaska Department of Labor and Workforce Development, CSSD should have modified Mr. U's child support based on the income figure the division previously used to establish his child support obligation. The three-child amount is \$426 per month, which should be adopted. Finally, Mr. U is entitled to paternity testing for the child K, which CSSD is already arranging. He is not entitled to paternity disestablishment with CSSD for C and K because he has already acknowledged his paternity of them. Mr. U must file an action in court regarding those two children.

¹⁰ [http://live.laborstats.alaska.gov/\(no name\);](http://live.laborstats.alaska.gov/(no name);) accessed December 23, 2013.

¹¹ *Id.*

¹² Exh. 1 at pg. 7.

V. Child Support Order

- Mr. U's child support for C, K and K is modified to \$426 per month for three children, effective October 1, 2013.

DATED this 23rd day of December, 2013.

Signed _____
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 10th 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.]