

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

In the Matter of:	)	
	)	OAH No. 13-1858-CSS
T C	)	CSSD No. 001108679
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, T C, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on October 29, 2013. The obligee children are N, 16, A, 13, and T Jr., 11. The custodian is B H.

The hearing was held on January 21, 2014. The record closed February 1, 2014.<sup>1</sup> Ms. H appeared by telephone. Mr. C did not participate.<sup>2</sup> Andrew Rawls, Child Support Specialist, represented CSSD.

CSSD's Modified Administrative Child Support and Medical Support Order dated October 29, 2013 and served October 30, 2013 was correct, based on the information available at the time. However, evidence received through the formal hearing process presents a more complete picture of Mr. C's income and ability to pay child support. The evidence received at hearing establishes that Mr. C's monthly child support amount for three children is \$457 per month effective August 1, 2013.<sup>3</sup>

**II. Facts**

The following facts are supported by the exhibits and the testimony of Ms. H.

Mr. C's child support was set at \$50 per month in July 2011.<sup>4</sup> Ms. H requested modification of the July 2011 order and CSSD served Notices of Petition for Modification of

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<sup>1</sup> As required by regulation, the record remained open for 10 days to provide Mr. C with an opportunity to show reasonable cause for his failure to participate. 15 AAC 05.030(j).

<sup>2</sup> A current mailing address must be provided to the department with the request for appeal, and any change in mailing address after the request for appeal is filed must be reported to the department immediately. If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department.

15 AAC 05.010. The file contains no indication that the notice of hearing sent by first class mail was returned. Therefore, the hearing proceeded in his absence.

<sup>3</sup> Because the parties may introduce evidence different from the department when the division made its initial decision, the administrative law judge determines the facts *de novo*, based on the evidence presented at hearing.

<sup>4</sup> Exh. 1.

Administrative Support Order on July 31, 2013, requesting the parties provide current financial information.<sup>5</sup> Mr. C complied with the request.<sup>6</sup> Using this information, on October 29, 2013, the division issued a Modified Administrative Child Support and Medical Support Order, ordering Mr. C to pay \$664 per month for three children, effective August 1, 2013.

The division determined the amount of child support by treating Mr. C's unemployed status as a voluntary unemployment situation, thereby allowing the division to impute income to Mr. C for purposes of child support. The division annualized his last two quarters of earnings reported to the Alaska Department of Labor, and then annualized the amount. This resulted in an anticipated annual income in the amount of \$27,966.76.<sup>7</sup> After adding the PFD and subtracting allowable deductions, Mr. C's anticipated annual adjusted income totaled \$24,153.26.<sup>8</sup> Applying the appropriate formula for three children, Mr. C's monthly support obligation was determined to be \$664 each month.<sup>9</sup> Mr. C objected to the income calculations because he is a seasonal employee.<sup>10</sup>

At the hearing, Ms. H and CSSD agreed that CSSD's original calculation was incorrect and overstated Mr. C's ability to pay. CSSD acknowledged that Mr. C had been laid off due to lack of work and should not be considered voluntarily unemployed. Using his actual earnings, Mr. C's monthly child support obligation for three children is \$457.<sup>11</sup> Ms. H agreed that this figure was correct.

### **III. Discussion**

As the person who filed the appeal in this case, Mr. C has the burden of proving by a preponderance of the evidence that the agency's Modified Administrative Child Support and Medical Support Order dated October 29, 2013 is incorrect.<sup>12</sup> Although he did not participate, the evidence received at hearing establishes that the October 29, 2013 order was incorrect.

At the time CSSD reviewed Mr. C's income, it appeared as if he had terminated his employment and was voluntarily unemployed. When an obligor is voluntarily or unreasonably

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<sup>5</sup> Exh. 3.

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

<sup>7</sup> Exh. 6 p 6.

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

<sup>9</sup> Exh. 6.

<sup>10</sup> Exh. 7. CSSD had no objection to considering Mr. C's untimely request for hearing. (Andrew Rawls).

<sup>11</sup> Exh. 10; Exh. 11.

<sup>12</sup> 15 AAC 05.030(h).

unemployed or underemployed, CSSD may impute income to the obligor considering the obligor's age, education, job history, job market, etc. This is why CSSD annualized Mr. C's earnings. Mr. C appealed, writing in support of his request that he was a seasonal worker. Ms. H agreed that Mr. C was a seasonal worker and his Department of Labor records indicated that he was terminated because of lack of work. In this instance, a finding of voluntary unemployment cannot be sustained. Before determining whether Mr. C's child support should be paid on a seasonal basis it is important to determine what his child support obligation is under Civil Rule 90.3(a). It is from this point that any adjustment for seasonality will be considered.

A. Child Support

Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>13</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>14</sup>

When calculating ongoing child support, determining an obligor's annual income for purposes of child support is "necessarily... speculative because the relevant income figure is expected future income."<sup>15</sup> However, child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. Mr. C's actual 2013 earnings best represented his ability to pay support when owed.

CSSD provided revised calculations using Mr. C's actual income for 2013, \$15,353.38. To this amount CSSD added \$2,512 unemployment benefits and the PFD in the amount of \$900. When added together, Mr. C's total gross income for purposes of child support is \$18,765.38.<sup>16</sup> After allowable deductions, his adjusted annual income totals \$16,609.94. This yields a monthly child support payment for three children in the amount of \$457.

B. Seasonal Employment.

Obligors employed in seasonal industries may find it easier to meet their support obligation by paying unequal payments with higher payments during the seasonal employment

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<sup>13</sup> AS 25.27.190(e).

<sup>14</sup> Civil Rule 90.3(h).

<sup>15</sup> See Civil Rule 90.3, Commentary III.E.

<sup>16</sup> Exh. 11 p 2.

and lower payments in the other months.<sup>17</sup> However, seasonal variations start with the higher monthly payments so that a deficit situation cannot occur. Until the excess payments begin, the average monthly amount is paid.<sup>18</sup>

Additionally, prior to approving a seasonal variance, the obligor must establish that the burden of budgeting for periods of unequal income should be placed on the custodian, not the obligee child, and the custodian must agree to the burden.

Because Mr. C did not participate at hearing, he was unable to supplement the hearing record or identify evidence already in the record tending to establish that the burden of budgeting should be on the custodian and the obligee children. Therefore, his request for a seasonal variation is denied.

#### **IV. Conclusion**

Therefore, the Modified Administrative Child Support and Medical Support Order issued October 14, 2013 overstated Mr. C's income. The October 2013 order should be changed to reflect that Mr. C's monthly obligation for three children should be \$457.

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

1. CSSD's October 29, 2013 Modified Administrative Child Support and Medical Support Order is modified to reflect that Mr. C owes \$457 per month for three children effective August 1, 2013.
2. All other provisions of the October 29, 2013 Administrative Child Support and Medical Support Order remains in full force and effect.

DATED this 11<sup>th</sup> day of February, 2014.

*Signed*  
\_\_\_\_\_  
Rebecca L. Pauli  
Administrative Law Judge

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<sup>17</sup> See Civil Rule 90.3(c)(5).

<sup>18</sup> For example: average monthly amount is \$100. Obligor is seasonal employee working April – October. He proposes paying 150 while seasonally employed and \$50 per month in the remaining months. The division orders modification November 1. The obligor will pay \$100 per month until April when his support increases. *Id.*

**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 3<sup>rd</sup> day of March, 2014.

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

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