

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

IN THE MATTER OF: )

Q C. G )

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OAH No. 14-0093-CSS

CSSD No. 001180292

**DECISION AND ORDER**

**I. Introduction**

The obligor, Q C. G, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on December 23, 2013. This order added the child T and increased Mr. G's monthly support obligation from \$50 per month to \$1,207 per month effective December 1, 2013. The custodian is N R. O. The obligee children are F, B, and T. Two hearings have been held in this matter. The obligor has participated in each hearing. The custodian was unavailable for the second hearing.<sup>1</sup> Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. G is liable for support in the amount of \$50 per month for three children for the month of December 2013, and \$1,103 per month effective January 2014 and ongoing. Ongoing support is suspended as of February 1, 2014 because Mr. G has been living with the custodian and their three children since then. In the event Mr. G becomes liable for ongoing support again in the future, CSSD may begin charging him \$1,103 per month immediately, subject to future modification.

**II. Facts**

Mr. G and Ms. O have three children, F, 4, B, 2, and T, 6 months. Mr. G has had an order to pay support for F and B in the amount of \$50 per month since March 27, 2012.<sup>2</sup> Support was established at the minimum allowed by law because Mr. G was incarcerated.

By notice dated November 22, 2013, CSSD initiated an "add-a-kid" modification to add T to the order for F and B.<sup>3</sup> Mr. G did not provide financial information.

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<sup>1</sup> A telephone call placed to Ms. O's contact number was not answered and there was no way to leave a voicemail message for her.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 2.

On December 23, 2013, CSSD issued a modification order that added T and set Mr. G's ongoing child support at \$1,207 per month for three children.<sup>4</sup> Mr. G is a journeyman carpenter. His last full year of reported earnings was 2008, and totaled \$39,620.<sup>5</sup> CSSD calculated Mr. G's obligation under the December 2013 modification order for his three children using his 2008 hourly wage, \$26.81 per hour times 2,080 hours. This resulted in an annual income of \$55,764.<sup>6</sup>

Mr. G appealed CSSD's order because it overstated his income. Mr. G did not understand how his child support obligation was based on \$55,764 in annual income when he has been incarcerated, recently released, and remains unemployed.<sup>7</sup>

During the hearing, Mr. G testified that he spent his first year out of jail getting reintegrated into society and deciding how best to move forward with his life. His parents were paying his child support for him. He is a journeyman carpenter, so he decided to obtain his general contractor's license. At the time of the first hearing he had completed one week of schooling. Because there is no record of Mr. G earning the amount attributed to him in the December 2013 order, this order likely overstated his income. The hearing was continued to provide Mr. G with the opportunity to obtain his license and present evidence on what his actual wages are likely to be.

By the second hearing he was licensed and was bidding on jobs. Mr. G acknowledged that he will earn \$50,000 per year as a general contractor. CSSD agrees that \$50,000 per year is an accurate estimate of Mr. G's annual future earnings at this time. Mr. G also informed this tribunal and CSSD that he has been living with Ms. O and their three children since February 2014.

### **III. Discussion**

Mr. G filed this appeal and requested a formal hearing. As the person who requested the hearing, Mr. G has the burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.<sup>8</sup>

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

<sup>5</sup> Exh. 6. Mr. G had no reported earnings for 2009 and 2010. His reported income was limited to unemployment insurance. In 2011 Mr. G had \$1,135 in reported earnings.

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

<sup>7</sup> Exh. 5.

<sup>8</sup> 15 AAC 05.030(h).

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>9</sup> Adding other children to a child support order is a material change in circumstance.<sup>10</sup> In this case, CSSD has modified Mr. G’s child support for the purpose of adding T to his previous order for F and B.

CSSD calculated Mr. G’s modified support amount using his last known wage, \$26.81 per hour times 2,080 hours for three children, because Mr. G did not submit any financial information. However, this calculation overstated his income.

Through the hearing process, Mr. G presented evidence that his annual earnings would, more likely than not, be \$50,000. As set forth in Attachment A, this amount results in a \$1,103 monthly child support obligation for three children. CSSD agrees that, using the evidence developed at hearing, this is an accurate amount which best reflects Mr. G’s expected 2014 earnings.

Because Mr. G was unemployed until 2014, his child support should remain at \$50 per month for December 2013. Effective January 2014, his child support should increase to \$1,103 per month. This amount reflects his actual earning capacity. Ongoing support is suspended effective February 1, 2014 because Mr. G has been living with the custodian and the three obligee children since then. Should the family separate, and Mr. G become liable for ongoing support again in the future, CSSD may begin charging him \$1,103 per month immediately, subject to future modification.

#### **IV. Conclusion**

Mr. G met his burden of proving by a preponderance of the evidence that CSSD’s December 23, 2013 Modified Administrative Child and Medical Support Order was incorrect.

Mr. G is liable for support for three children from December 2013 forward. The record supports the conclusion that Mr. G’s child support for December 2013 should remain at \$50 because his earning situation throughout 2013 remained unchanged. However, effective January 2014, the record establishes that \$50,000 is a correct estimate of what Mr. G will earn as a general contractor. Accordingly, his ongoing support as of January 2014 should be calculated according to Civil Rule 90.3(a) based on an annual income for purposes of child support in the amount of \$50,000. Using this figure, Mr. G is obligated to pay \$1,103 per month effective

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<sup>9</sup> AS 25.27.190(e).

<sup>10</sup> See 15 AAC 125.321(b)(2)(B).

January 2014 and ongoing. Finally, his support should be suspended effective February 1, 2014 because the family reunited and remains intact.

**V. Child Support Order**

- Mr. G’s ongoing child support obligation for F, B, and T is \$50 effective December 1, 2013, increasing to \$1,103 per month for three children effective January 1, 2014, and ongoing.
- Support owing under this order is suspended while Mr. G lives in the same home as his children. Should the family separate, and Mr. G become liable for ongoing support again in the future, CSSD may begin charging him \$1,103 per month immediately, subject to future modification.
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated June 27, 2013 remain in full force and effect.

DATED this 21<sup>st</sup> day of April, 2014.

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 9<sup>th</sup> day of May, 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.]