

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

In the Matter of:)	
)	OAH No. 14-0138-CSS
B A. C)	CSSD No. 001162922
_____)	

DECISION AND ORDER

I. Introduction

The obligor, B A. C, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 9, 2014. The obligee child is M, 4 years old. The custodian is N D. P.

The hearing was held on February 20, 2014. Both parties appeared by telephone, along with CSSD's Child Support Specialist, Andrew Rawls. Mr. C is represented by counsel, Herbert Pearce.

Based on the record as a whole and after careful consideration, Mr. C's child support is modified to \$197 per month for one child, M, effective January 1, 2014.

II. Facts

A. Procedural History

Mr. C's child support obligation for M was set at \$239 per month in September 2010.¹ Mr. C requested a modification review on two occasions in October 2013.² On December 11, 2013, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ Mr. C provided financial information.⁴ On January 9, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that increased his child support to \$293 per month, effective November 1, 2013.⁵ He appealed on January 21, 2014.⁶

¹ Exh. 1. On October 8, 2013, CSSD modified the order to add a potential visitation credit, but did not change the monthly support amount. Exh. 2.

² Exhs. 3-4. It appears that Mr. C filed the second petition for modification before CSSD could process the first one. Apparently, CSSD then processed the second petition and considered the first one moot. No objection to this treatment was raised.

³ Exh. 6.

⁴ Exh. 7.

⁵ Exh. 9.

⁶ Exh. 10.

B. Material Facts

For several years, Mr. C has worked for No Name., performing IT and data management duties. He earned an average of \$25,000 per year, but he was laid off in August 2013 due to a lack of work.⁷ His total earnings from the company in 2013 were \$17,182.94.⁸ After the layoff, he was on unemployment briefly and received \$642 in benefits,⁹ but those stopped when he got a part-time job working for his brother, Z, the owner of No Name, LLC. Mr. C received \$836.50 from Z.¹⁰

Although Mr. C submitted numerous applications to potential employers in his line of work, he was not able to secure full-time employment because he does not have the Microsoft, Cisco and Novell certifications currently required to work in the internet technology field. As a result, Mr. C enrolled in the Caregiver Training Academy to become a CNA, Certified Nurse Assistant, and upon completing that program, plans to work as a CNA and go into the nursing program at the University of Alaska at Anchorage.

Mr. C has two children older than M, Y and D, for whom he pays child support through CSSD. The support order is for \$494.98 per month.¹¹ After the hearing, CSSD's information shows that in 2013, Mr. C paid a total of \$4,469.90 on that order, which averages out to be \$372.49 per month.¹²

Mr. C is married. He testified that his wife and other family members support him while he is unemployed.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹³ 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. C's child support obligation was set at

⁷ Exh. 12 at pgs. 1-2.
⁸ Exh. 15 at pg. 3.
⁹ Exh. 15 at pg. 2.
¹⁰ Exh. 15 at pg. 4.
¹¹ Exh. 14 at pg. 2.
¹² Exh. 16.
¹³ AS 25.27.190(e).

\$239 in September 2010. Thus, a child support calculation of \$203.15¹⁴ or lower would be necessary for a downward modification in this case.

A modification is effective beginning the first of the next month after CSSD issues a notice to the parties that a modification has been requested.¹⁵ In this case, the notice was issued on December 11, 2013, so the modification is effective January 1, 2014.¹⁶ CSSD's modification order states the modification is effective November 1, 2013, but that date is incorrect.

In a child support matter, the person who files the appeal has the burden of proving that the division's order was issued in error.¹⁷ Mr. C filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.¹⁸

Civil Rule 90.3(a)(1)(C) provides that a parent is entitled to a deduction from income for "child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid" This deduction is applicable in this case because Mr. C is paying support for his prior children, Y and D. CSSD calculated Mr. C's total payments for the children from agency records and determined the 12-month average was \$372.49. This figure is correct and should be included in Mr. C's child support calculation for M.

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. After the hearing, CSSD submitted two revised estimates of Mr. C's child support obligation. The first, \$259 per month,¹⁹ is based on annual income of \$25,001.60, which CSSD determined from an hourly pay rate of \$12.02 per hour, paid by one of his previous employers.²⁰ This is the income figure that CSSD used in the calculation attached to the modification order at issue in this appeal.²¹

¹⁴ \$239 x .85 = \$203.15

¹⁵ 15 AAC 125.321(d).

¹⁶ Exh. 6.

¹⁷ 15 AAC 05.030(h).

¹⁸ 2 AAC 64.290(e).

¹⁹ Exh. 18.

²⁰ See Exh. 7 at pg. 12.

²¹ Exh. 9 at pg. 6.

The second estimate, \$197 per month, is based on Mr. C's total income in 2013 of \$19,756.94.²² It includes his earnings at No Name; the unemployment benefits he received after being laid off; \$1,032 in self-employment income, which includes the payment from his brother for the part-time work at No Name, LLC; and the 2013 PFD.²³

Mr. C's actual income for 2013 is the figure that should be used for the child support modification in this case. His prior income at No Name should not be used because he was laid off from that job due to lack of work and it is no longer a correct assessment of his actual income. Thus, the modified child support amount of \$197 per month is correct and should be adopted. This figure will represent a slight reduction in Mr. C's child support, but he estimated that his income will significantly increase in the future. Because he is taking CNA training and going into nursing, Mr. C's prediction is more likely than not correct. M will surely benefit from that increase in the future.

IV. Conclusion

Mr. C met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 9, 2014 is incorrect. Mr. C's actual total income in 2013 yields a child support amount of \$197 per month. This figure is correct and should be adopted as of January 1, 2014. No variance under Civil Rule 90.3(c) was requested or granted.

V. Child Support Order

- Mr. C is liable for modified child support for M in the amount of \$197 per month, effective January 1, 2014;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 9, 2014 remain in full force and effect.

DATED this 20th day of June, 2014.

Signed

Kay L. Howard
Administrative Law Judge

²² Exh. 19.

²³ Exh. 19.

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 28th day of July, 2014.

By: Signed
Signature
Angela M. Rodell
Name
Commissioner
Title

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