

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

In the Matter of:)

N D. D)

OAH No. 14-0203-CSS

CSSD No. 001180276

DECISION AND ORDER

I. Introduction

The obligor, N D. D, appealed an Amended Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 31, 2013. The obligee child is H, 3 years old. The other party is D K. C.

The formal hearing was held on February 26, 2014. Both parties participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, Mr. D's child support is modified to \$50 per month, effective September 2013 and ongoing, based on his VA disability and having a prior child in the home who receives public assistance.

II. Facts

A. Procedural History

Mr. D's child support for H was set at \$77 per month in June 2012.¹ On August 2, 2013, Ms. C initiated a modification review.² On August 19, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. D did not provide income information.⁴ On December 31, 2013, CSSD issued an Amended Modified Administrative Child Support and Medical Support Order that set Mr. D's modified child support at \$403 per month, effective September 1, 2013.⁵ Mr. D filed an appeal and formal hearing request on January 30, 2014.⁶

¹ Exh. 1.

² Exh. 2.

³ Exh. 3.

⁴ CSSD's Pre-hearing Brief at pg. 1.

⁵ Exh. 5.

⁶ Exh. 6.

*B. Material Facts*⁷

Mr. D and Ms. C are the parents of H, who lives out of state full-time with his mother. Mr. D is a veteran with a disability rating of 10% based on his military service. He receives disability payments from the Veterans Administration of \$130.94 per month. Mr. D is attending college part-time. He was a medic in the military, so he was initially pursuing a degree as a physician's assistant, but he is now studying nursing. After one more semester, he will have completed his prerequisites and will be placed on a waiting list for admission into a nursing degree program. The waiting period can be up to two years, so he is hoping to become a CNA (Certified Nursing Assistant) in the meantime, a job that could pay up to \$14 per hour.

Mr. D has another child, A, who was born in 2009 and is thus older than H. Mr. D previously had shared custody of A and also paid \$187.50 in child support, but in July 2013, Mr. D was awarded primary custody of A. Mr. D described A as having anger and social issues that have required Mr. D to take his son out of day care. As a result, Mr. D can attend school only part-time and he is receiving public assistance on the child's behalf.

Ms. C testified only briefly. She stated that Mr. D does not have any contact with H, and that she does not have any medical coverage for their child.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁸ 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. In 2012, CSSD set Mr. D's child support at \$77 per month for one child.⁹ A new child support calculation would have to be at least \$11.55 more or less than \$77 in order to justify modification of Mr. D's child support amount.¹⁰

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹¹ CSSD issued the notice in Mr. D's case on August 19, 2013, so any modification of his child support obligation would be effective as of

⁷ The facts are taken from the obligor's hearing testimony, unless otherwise stated.

⁸ AS 25.27.190(e).

⁹ Exh. 1 at pg. 1.

¹⁰ $\$77 \times 15\% = \11.55

¹¹ 15 AAC 125.321(d).

September 1, 2013.¹² As the person who filed the appeal, Mr. D has the burden of proving by a preponderance of the evidence that the Amended Modified Administrative Child Support and Medical Support Order was incorrect.¹³

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. Civil Rule 90.3 states that means-based sources of funds such as public assistance are not to be counted as income.¹⁴ In addition, Civil Rule 90.3(a)(1)(D) states that an obligor parent is entitled to a deduction from income for "in-kind child support for children from prior relationships in the primary or shared physical custody of the parent." Mr. D receives non-taxable income of \$1,549.94 annually for his disability. CSSD inserted this information into its online child support calculator, which yields a child support amount of \$50 per month for one child.¹⁵ This figure is correct and should be adopted.

IV. Conclusion

Mr. D met his burden of proving by a preponderance of the evidence that the Amended Modified Administrative Child Support and Medical Support Order dated December 31, 2013 is incorrect. Based on his disability income and his prior child, Mr. D's modified child support is correctly calculated at \$50 per month. This figure should be adopted. The reduction to \$50 per month is not a variance under Civil Rule 90.3(c).

V. Child Support Order

- Mr. D's child support for H is modified to \$50 per month, effective September 1, 2013; and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated December 31, 2013 remain in full force and effect.

DATED this 5th day of May, 2014.

Signed

Kay L. Howard
Administrative Law Judge

¹² Exh. 3.

¹³ 15 AAC 05.030(h); *see also* 2 AAC 64.290(e).

¹⁴ Civil Rule 90.3, Commentary III.A.

¹⁵ Exh. 8.

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 23rd 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.]