

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

In the Matter of:)

U J. P)

) OAH No. 14-0288-CSS

) CSSD No. 001184186

DECISION AND ORDER

I. Introduction

The obligor, U J. P, filed an appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 29, 2014. The obligee child is K, 8 years old. The other party is T J. S.

The formal hearing was held on March 17, 2014. Both parties participated by telephone. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded.

Based upon the record and after careful consideration, CSSD's Modified Administrative Child Support and Medical Support Order is affirmed in the amount of \$486 per month for the period from November 2013 through January 2014. Mr. P's child support is further modified to \$50 per month, effective February 2014 and ongoing, so long as he is incarcerated. His child support shall revert to \$486 per month effective the first of the month following his release from jail.

II. Facts

A. Procedural History

Mr. P's child support for K was set at \$258 per month in August 2012.¹ On October 7, 2013, Ms. S initiated a modification review.² On October 10, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. P's employer provided information.⁴ On January 29, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. P's modified child support at \$486 per month,

¹ Exh. 1.
² Exh. 5.
³ Exh. 6.
⁴ Exh. 7.

effective November 1, 2013.⁵ Mr. P filed an appeal and formal hearing request on February 18, 2014.⁶

*B. Material Facts*⁷

Mr. P and Ms. S are the parents of K, who lives full-time with his mother.

Mr. P, a fisherman by trade, was previously incarcerated and was released in June 2013. Two months later he obtained employment at a repair shop. It was during this time period that the petition for modification was filed and CSSD obtained information that the obligor's employer was paying him \$15 per hour for 40 hours of work per week.⁸

For reasons not relevant to this appeal, Mr. P returned to jail on January 23, 2014, and he testified at the hearing that he has a parole hearing scheduled for the end of May 2014. He stated that if he is released, he may be able to get his former job back, but that won't be known until after the child support decision is issued.

Mr. P does not object to the \$486 per month child support modification, so long as he is not charged that amount while incarcerated. For her part, Ms. S testified that she knows Mr. P can't pay the full modified amount while he is incarcerated, but she did not specifically consent to a \$50 per month order. CSSD's position is that if a \$50 per month order is entered for the period of time Mr. P is in jail, that upon his release, his child support should revert to the \$486 per month amount set in the agency's modification order.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁹ 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 2008, CSSD set Mr. P's child support at \$258 per month for one child.¹⁰ A new child support calculation of \$296.70 or higher would be sufficient to modify Mr. P's child support obligation.¹¹ After the modification was requested,

⁵ Exh. 8.

⁶ Exh. 9.

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

⁸ Exh. 7.

⁹ AS 25.27.190(e).

¹⁰ Exh. 1 at pg. 1.

¹¹ $\$258 \times 115\% = \296.70

CSSD calculated Mr. P's modified ongoing child support at \$486 per month for one child, which meets the presumption that a "material change in circumstances" has been shown.

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹² CSSD issued the notice in Mr. P's case on October 10, 2013, so any modification of his child support obligation would be effective as of November 1, 2013.¹³ As the person who filed the appeal, Mr. P has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect.¹⁴

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. CSSD estimated that Mr. P's repair shop employment would provide him with income in the approximate amount of \$31,200 per year.¹⁵ This figure, when inserted into CSSD's online child support calculator, yields a child support amount of \$486 per month for one child.¹⁶ This figure is correct and should be adopted.

However, given Mr. P's incarceration, the \$486 per month amount should be deferred while he is in jail. His child support should be set at \$50 per month starting in February 2014, and should remain in place until the first of the month following his release. A child support order of \$50 per month is the minimum amount allowed under Alaska law.¹⁷ It has been upheld by the Alaska Supreme Court for incarcerated individuals who have a child support obligation.¹⁸ This is the typical amount that is charged for parents who are incarcerated.

IV. Conclusion

Mr. P did not meet his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 29, 2013 is incorrect because it calculated his child support based on his actual income at the time. However, given that Mr. P returned to jail in January 2014, his child support obligation should be further modified to \$50 per month for the period of his incarceration. Then, upon his release, his

¹² 15 AAC 125.321(d).

¹³ Exh. 6.

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

¹⁵ Exh. 8 at pg. 8.

¹⁶ *Id.*

¹⁷ Civil Rule 90.3(c)(1)(B).

¹⁸ *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

child support should revert to the \$486 per month figure calculated from Mr. P's actual 2013 income. These figures should be adopted.

The reduction to \$50 per month is not a variance under Civil Rule 90.3(c). Rather, it is an additional modification based on Mr. P's ability to pay support while he is incarcerated.

V. Child Support Order

- Mr. P's child support for K is modified to \$486 per month, effective November 1, 2013; and further modified to \$50 per month, effective February 1, 2014;
- Mr. P's child support shall revert to \$486 per month, effective the first of the month following his release from jail;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 29, 2014 remain in full force and effect.

DATED this 5th day of May, 2014.

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 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.]