

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

In the Matter of:	)	
	)	OAH No. 14-0294-CSS
T L. J	)	CSSD No. 001173679
_____	)	

**DECISION AND ORDER**

**I. Introduction**

The obligor, T L. J, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 30, 2014. The obligee child is B, 3 years old. The other parent in this case is D O.

The formal hearing was held on March 19, 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, Mr. J's child support is modified to \$349 per month, effective November 1, 2013 and ongoing, based on his actual income from VA disability payments.

**II. Facts**

*A. Procedural History*

Mr. J's child support for B was set at \$683 per month in April 2012.<sup>1</sup> On October 4, 2013, and again on October 31, 2013, Mr. J requested a modification review.<sup>2</sup> On October 7, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. J provided income information.<sup>4</sup> On January 30, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. J's modified child support at \$806 per month, effective November 1, 2013.<sup>5</sup> Mr. J filed an appeal and formal hearing request on February 13, 2014.<sup>6</sup> Prior to the hearing, CSSD prepared a revised child support calculation of \$620 per month, based on Mr. J's military retirement pay and VA benefits.<sup>7</sup>

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exhs. 2-3.  
<sup>3</sup> Exh. 4.  
<sup>4</sup> Exh. 5.  
<sup>5</sup> Exh. 6.  
<sup>6</sup> Exh. 7.  
<sup>7</sup> Exh. 8.

*B. Material Facts*<sup>8</sup>

Mr. J and Ms. O are the parents of B, who lives full-time with Ms. O. Mr. J is a veteran who was separated from the military in September 2013. He has a disability rating of 80% based on combat-related injuries.<sup>9</sup> As of November 2013 he is considered medically retired and began receiving nontaxable disability payments from the Veterans Administration (VA) of \$1,745.55 per month,<sup>10</sup> which, after the hearing, CSSD estimated totals \$20,946.60 annually.<sup>11</sup> This annual income figure, when inserted into CSSD's online child support calculator, results in a child support amount of \$349 per month.

Mr. J has another child, L, who was born in September 2008. Mr. J and L's mother, K, are separated and currently L lives full-time with her mother. Mr. J contributes to their household bills, including a \$230 trailer payment, and provides for them through a survivor benefit plan and medical insurance.<sup>12</sup> Mr. J and his wife have not yet divorced and there is no court or administrative order for L's custody or support.

**III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>13</sup> 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. J's child support at \$683 per month for one child.<sup>14</sup> A new child support calculation would have to be at least \$102.45 more or less than \$683 in order to meet the 15% change in the support amount and therefore justify modification of Mr. J's child support amount.<sup>15</sup>

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.<sup>16</sup> CSSD issued the notice in Mr. J's case on October 7, 2013, so any modification of his child support obligation would be effective as of

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<sup>8</sup> The facts are taken from the obligor's hearing testimony, unless otherwise stated.

<sup>9</sup> Exh. 9 at pg. 2.

<sup>10</sup> *Id.*

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

<sup>12</sup> *See* Exh. 5 at pg. 3.

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

<sup>14</sup> Exh. 1 at pg. 1.

<sup>15</sup> \$683 x 15% = \$102.45

<sup>16</sup> 15 AAC 125.321(d).

November 1, 2013.<sup>17</sup> As the person who filed the appeal, Mr. J has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.<sup>18</sup>

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.

Also, Civil Rule 90.3(a)(1)(C) states that a parent is entitled to an additional deduction from income for "child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid . . ." Although Mr. J is contributing to his older daughter L's support while she is in the custody of her mother, Mr. J acknowledged that he is not actually paying support for L. In the event a court or administrative agency such as CSSD orders him to pay support for L in the future, Mr. J may become eligible to have those payments included as deductions from income in his child support calculation for B. Until such time, however, the support he provides for L cannot be considered in B's case.

CSSD correctly calculated Mr. J's modified child support at \$349 per month. This figure is at least 15% lower than his 2012 child support amount, so it meets the minimum change necessary to modify his child support obligation for B.

#### **IV. Conclusion**

Mr. J met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 30, 2014 is incorrect. Based on his disability income, Mr. J's modified child support is correctly calculated at \$349 per month. This figure should be adopted. The reduction in the support amount is not a variance under Civil Rule 90.3(c).

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

- Mr. J's child support for B is modified to \$349 per month, effective November 1, 2013; and ongoing;

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<sup>17</sup> Exh. 4.

<sup>18</sup> 15 AAC 05.030(h); *see also* 2 AAC 64.290(e).

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 30, 2014 remain in full force and effect.

DATED this 8<sup>th</sup> 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 27<sup>th</sup> day of May, 2014.

By: *Signed* \_\_\_\_\_  
Signature  
Jeffrey A. Friedman  
Name  
Administrative Law Judge  
Title

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