

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

In the Matter of:)
) OAH No. 14-0449-CSS
D D. C) CSSD Nos. 001166242 & 001191271
_____)

DECISION AND ORDER

I. Introduction

The obligor, D D. C, appeals a Modified Administrative Child Support and Medical Support Order issued by the Child Support Services Division (CSSD). The children are K R. C, Z P. C, D D. C, and T H. C. The custodian of record at this time is Z M. C.

A hearing was held on April 15, 2014. Mr. C appeared by telephone and represented himself. CSSD was represented by Child Support Specialist Andrew Rawls. Z M. C was called at the start of the hearing, but decided not to participate in the hearing. Based on the evidence in the record, Mr. C's ongoing child support should be set at \$437 per month for four children.

II. Facts

A. Background

A Modified Administrative Child Support and Medical Support Order was issued by CSSD on June 26, 2013.¹ This order set Mr. C's support obligation at \$50 per month for two children, D and T. A Notice of Adding a Child to a Support Order and Petition for Modification of Administrative Support Order was issued on July 24, 2013.² A new Modified Administrative Child Support and Medical Support Order was issued on September 23, 2013.³ This order added two children, K and Z, to the existing support order, and set Mr. C's support obligation at \$506 per month for four children. Mr. C appealed that order, indicating that he was not making as much money as indicated in the order, and also arguing that his father had custody of T.⁴

¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 4.

⁴ Exhibit 6. There are two documents marked as Exhibit 6. This is the first with that number, and consists of only one page.

B. Material Facts

In the beginning of 2013, Mr. C worked for No Name Services.⁵ He earned \$8,495.63 from No Name during 2013. He lost that job when he was incarcerated.⁶ He also received \$4,824 in unemployment benefits during that year.

In early 2014, Mr. C obtained a job at No Name earning \$8.50 per hour. During the first quarter, he was not full time, and also took some time off to attend an alcohol treatment program, and some time to visit his parents.⁷ His total income during that quarter was \$1,835.57. In addition, he received \$1,340 in unemployment benefits during the first quarter of 2014. Beginning with the second quarter, Mr. C has been working full time, 40 hours a week. His expected earnings during the remainder of the year are \$13,260.⁸ Many people in low wage jobs cannot expect to consistently work 40 hour weeks because they miss work for unpaid sick days or unpaid holidays when the business is closed.⁹ Mr. C, however, was confident of maintaining a full time, 40 hour per week schedule. In addition, because his annualized earnings include lower earnings from the first quarter when he did not consistently work 40 hours per week, the annualized total income for 2014 is somewhat lower than what an employee would earn working 40 hours per week for an entire year.

III. Discussion

A parent is obligated both by statute and at common law to support his or her children.¹⁰ 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." Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ 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. If the 15% change has not been met, CSSD may modify the child support obligation, but is not required to do so. A modification is effective beginning the month after the parties are served

⁵ Testimony of Mr. C; Exhibit 6, page 1.

⁶ Testimony of Mr. C.

⁷ *Id.*

⁸ 39 weeks at 40 hours per week times \$8.50 per hour.

⁹ See *In re R.V.*, OAH No. 11-0188-CSS (Department of Revenue 2011), at 3; *In re S.L.*, OAH No. 10-0260-CSS (Department of Revenue 2010), at 3.

¹⁰ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

¹¹ AS 25.27.190(e).

with notice that a modification has been requested.¹² Finally, the person appealing CSSD's decision has the burden of demonstrating that the decision is incorrect.¹³

Mr. C's prior support order was set at \$50 per month because he was incarcerated, and therefore not able to work.¹⁴ There has been a material change in circumstances in that he is now employed. In addition, two more children have been added to the support order. Because the notice of the petition for modification was served in July of 2013, the modification will be effective August 1, 2013.

For 2013, Mr. C's income included \$8,495.63 in wages, \$4,824 in unemployment benefits, and \$900 from a Permanent Fund Dividend payment. Inserting those numbers into CSSD's online support calculator results in a support obligation of \$393 per month for four children.¹⁵

In 2014, Mr. C is expected to earn \$15,095.57 in wages in addition to the \$1,340 in unemployment benefits received during the first quarter. He will not receive a PFD because he was incarcerated during a portion of 2013. Based on these figures, his support obligation would be \$437 per month for four children.¹⁶ Although this amount is only an 11% increase from the prior amount, there is a material change in circumstances because Mr. C was incarcerated, and therefore unemployed, during part of 2013, and is not expected to be incarcerated at all during 2014.

Mr. C was also concerned about who would receive the child support payments he has been and will be making. He testified that T is in his father's custody, so the support for T should go to him. For purposes of this decision, however, the important factor is that Mr. C is not currently sharing the custody of any of the children. Mr. C owes a duty of support for his children as long as he is not their custodian. Mr. C or Z C may wish to contact their CSSD caseworker to resolve who should receive the support payments being made by Mr. C.

IV. Conclusion

There has been a material change of circumstances that allow for modification of the prior child support order. Based on Mr. C's income during 2013, his child support should be set

¹² 15 AAC 125.321(d).

¹³ 15 AAC 05.030(h).

¹⁴ See Exhibit 1, page 4.

¹⁵ Exhibit 7, page 2.

¹⁶ Exhibit 8.

at \$218 per month for one child, \$295 per month for two children, \$360 per month for three children, and \$393 per month for four children, with an effective date of August 1, 2013.

Based on his expected income for 2014, Mr. C's ongoing child support should be set at \$243 per month for one child, \$328 per month for two children, \$400 per month for three children, and \$437 per month for four children, effective January 1, 2014.

This child support calculation was made pursuant to the guidelines in Civil Rule 90.3.

V. Child Support Order

- Mr. C's child support obligation is set at \$393 per month for four children effective August 1, 2013 through December 31, 2013;
- Mr. C's ongoing child support obligation is set at \$437 per month for four children, effective January 1, 2014;
- All other provisions of the September 23, 2013, Modified Administrative Child Support and Medical Support order remain in effect.

DATED this 21st day of April, 2014.

Signed

Jeffrey A. Friedman
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 9th 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.]