

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

In the Matter of:	)	
	)	OAH No. 14-0452-CSS
G M. K	)	CSSD No. 001173527
_____	)	

**DECISION AND ORDER**

**I. Introduction**

G M. K appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 6, 2014. The obligee children are Y, 8 and Z, 4. The custodian is H R. X.

The hearing was held on April 22, 2014. All of the parties participated by telephone, including James Pendergraft, Child Support Specialist, for CSSD. The hearing was recorded.

Based on the evidence and after careful consideration, the Modified Administrative Child Support and Medical Support Order dated March 6, 2014 is vacated. Mr. K's child support obligation for Y and Z shall remain at \$1,366 per month for two children (\$1,012 for one child), as set in April 2011. Mr. K has taken a new position for his employer and his current income does not support an upward modification.

**II. Facts**

*A. Procedural History*

Mr. K's child support obligation for Y and Z was set at \$1,366 per month for two children (\$1,012 for one child), in April 2011.<sup>1</sup> On December 20, 2013, Ms. X requested a modification review.<sup>2</sup> On December 24, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On March 6, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that increased his child support to \$1,636 per month, effective January 1, 2014.<sup>4</sup> Mr. K appealed on March 13, 2014.<sup>5</sup>

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

*B. Material Facts*

Mr. K is employed by No Name Alaska at the No Name, where previously he was a Senior No Name Operator and earned \$28.00 per hour.<sup>6</sup> In that position, he had reached level 4, with no further opportunities for advancement, so in early 2014 he transferred to the no name maintenance department. Effective March 20, 2014,<sup>7</sup> the transfer resulted in a pay cut to \$25.93 per hour, but Mr. K will be able to advance to level 6 working in maintenance, and he expects his pay to reach the amount he was earning as a no name operator within 1½ years.

After the hearing, CSSD was directed to prepare a revised calculation based on an updated estimate of Mr. K's actual income for 2014. CSSD used an average of his straight time and overtime pay to estimate his annual salary at \$93,977.52.<sup>8</sup> This figure, when inserted into CSSD's online child support calculator,<sup>9</sup> results in a child support amount of \$1,413 per month.<sup>10</sup> This is a 3.4% increase over his previous child support amount of \$1,366 per month.<sup>11</sup>

Mr. K and his wife, S, have three children in the home: her daughter from a prior relationship, F, 7, and their two biological children, K, 2, and D, 2 mos.

**III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>12</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. Mr. K's child support has been \$1,366 since April 2011. Thus, a child support calculation of \$1,570.90 or more would be sufficient to warrant modification in this case.<sup>13</sup>

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.<sup>14</sup> In this case, the notice was issued

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<sup>6</sup> In 2013, the Alaska Department of Labor reported his earnings totaled \$109,475.03. *See* Exh. 8.

<sup>7</sup> Letter from obligor's payroll administrator, received April 22, 2014, pg. 1.

<sup>8</sup> CSSD's May 19, 2014 Submission to Record, pg. 1.

<sup>9</sup> <https://webapp.state.ak.us/cssd/guidelinecalc/form>

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

<sup>11</sup>  $\$1,413 - \$1,366 = \$47 \div \$1,366 = 3.4\%$

<sup>12</sup> AS 25.27.190(e).

<sup>13</sup>  $\$1,366 \times 1.15 = \$1,570.90$

<sup>14</sup> 15 AAC 125.321(d).

on December 24, 2013, so any modification of Mr. K's child support obligation for Y and Z would be effective as of January 1, 2014.<sup>15</sup>

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.<sup>16</sup> Mr. K filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated March 6, 2014 is incorrect.<sup>17</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." In its modification order, CSSD used Mr. K's 2013 income figure of \$109,475.03 that was reported by the Alaska Department of Labor and Workforce Development.<sup>18</sup> This figure resulted in a support amount of \$1,636 per month.<sup>19</sup>

Mr. K argues that his child support should be calculated based on an estimate of his 2014 income, not his 2013 income. He claims that in early 2014 he transferred to a different work position, a change that he had been planning for nearly two years, in order to increase his long-term earning potential. Mr. K acknowledged he would be earning a lower hourly wage temporarily, but he estimates that he will be back to his previous hourly wage within 1½ years.

The obligor's testimony was credible. Plus, neither CSSD nor Ms. X claimed that Mr. K is voluntarily and unreasonably underemployed, or that he made the switch to a lower paying job at the mine in response to Ms. X's petition for modification. Thus, Mr. K met his burden of proving that CSSD's modification order was incorrect. The revised calculation that CSSD submitted after the hearing is an accurate estimate of Mr. K's 2014 income, and the resulting child support amount of \$1,413 is therefore correct. This figure does not meet the necessary 15% change in order to warrant modifying Mr. K's child support, so the obligor's prior child support amount of \$1,366 per month for two children (\$1,012 for one child), should be reinstated.

#### **IV. Conclusion**

Mr. K met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated March 6, 2014 is incorrect. Mr.

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<sup>15</sup> See Exh. 3.

<sup>16</sup> 15 AAC 05.030(h).

<sup>17</sup> 2 AAC 64.290(e).

<sup>18</sup> Exh. 8.

<sup>19</sup> Exh. 6 at pg. 6.

K's child support obligation for Y and Z has been recalculated using an estimate of his 2014 income. The result is a child support calculation of \$1,413 per month. However, this figure does not meet the 15% change necessary to warrant modification of Mr. K's child support, so the Modified Administrative Child Support and Medical Support Order dated March 6, 2014 should be vacated and Mr. K's obligation should remain at \$1,366 per month for two children (\$1,012 for one child). There was no variance under Civil Rule 90.3(c) requested or granted.

**V. Child Support Order**

- The Modified Administrative Child Support and Medical Support Order dated March 6, 2014 is vacated;
- Mr. K's child support obligation for Y and Z shall remain at \$1,366 per month for two children (\$1,012 for one child), as set in April 2011.

DATED this 17<sup>th</sup> day of June, 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 7<sup>th</sup> day of July, 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.]