

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

IN THE MATTER OF:)

T L. J)

OAH No. 14-0572-CSS

CSSD No. 001180253

DECISION AND ORDER

I. Introduction

T L. J appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on February 10, 2014. The obligee child is K, 15. The custodian of record is L K. U.

The formal hearing was held on May 5, 2014. Ms. J appeared by telephone; Mr. U could not be reached and thus did not participate. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Ms. J's child support is modified to \$71 per month, effective February 1, 2014, and ongoing, based on her actual income.

II. Facts

A. Procedural History

Ms. J's child support was set at \$271 per month in April 2012.¹ She requested a modification review on January 14, 2014.² On January 17, 2014, CSSD issued a Notice of Petition for Modification Review.³ Ms. J provided income information.⁴ On February 10, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified her child support obligation by adding a visitation credit, but did not modify the child support amount of \$271 per month.⁵ Ms. J appealed and requested a formal hearing on March 14, 2014.⁶

B. Material Facts

Ms. J and Mr. U are the parents of K, 15 years of age. Ms. J lives in No Name. At some time in the past, Mr. U moved to Anchorage with K and has remained there. K lives with his

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

father during the school year, but he also spends extended visitation time with Ms. J during the summer and for school vacations.

Ms. J's only income is derived from Native corporation dividends and the PFD when it is not garnished by CSSD. In 2013, she received dividends totaling \$3,364.⁷ Ms. J also receives food stamps. She is able to survive on this income amount because she lives in an older friend's home rent-free. Also, she has an older son, V, 20, who lives with her and occasionally works in a local cannery.

Ms. J is not currently employed, nor is she able to secure typical kinds of work. Her thumb was amputated in 2012 and she cannot use her hands like she used to. Her last recorded jobs were for canneries in 2003-2004.⁸ Ms. J does not have a driver's license or vehicle – she relies on friends for transportation. Ms. J is now limited to jobs such as private housekeeping, but with no transportation, even that would be very difficult to arrange.

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. Ms. J's child support was set at \$271 per month in April 2012. Thus, a calculation at least \$40.65 higher or lower than \$271 is needed to warrant modification in this case.¹⁰

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.¹¹ In this case, the notice was issued on January 14, 2014, so a modification would be effective as of February 1, 2014.¹²

As the person who filed the appeal, Ms. J has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was issued in error.¹³ That order did not modify Ms. J's ongoing child support – it merely added a

⁷ Exh. 4 at pg. 2.

⁸ Exh. 7.

⁹ AS 25.27.190(e).

¹⁰ $\$271 \times 15\% = \40.65

¹¹ 15 AAC 125.321(d).

¹² Exh. 3.

¹³ 15 AAC 05.030(h).

long-term visitation credit in the event she has overnight visitation with K for more than 27 consecutive days.

Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated based on his or her "total income from all sources," minus mandatory deductions such as taxes and Social Security. In 2012, CSSD calculated Ms. J's child support at \$271 per month, based on the Alaska minimum wage in effect at the time.¹⁴ After Ms. J requested a modification in early 2014, she submitted a Child Support Guidelines Affidavit that stated her total 2013 income was \$3,364 from the No Name Corporation.¹⁵ Yet CSSD did not use that information; it merely added a visitation credit to her child support order and left Ms. J's child support at \$271 per month.¹⁶ That figure is no longer accurate.

Prior to the hearing, CSSD submitted a child support calculation based on the Native corporation dividends she reported in 2013.¹⁷ The resulting figure, \$71 per month, is correct because it is based on her actual income, and there is no evidence in the record that currently she has the ability to pay more because of her diminished ability to find employment. Ms. J testified credibly regarding her current circumstances – she recently had her thumb amputated, she receives Native dividends as her only income source, and she does not have transportation. Ms. J's child support should be modified based on the actual income she reported before CSSD issued the modification order.

IV. Conclusion

Ms. J met her burden of proving that the Modified Administrative Child Support and Medical Support Order dated February 10, 2014 is incorrect. Ms. J is unemployed, and may remain so for the foreseeable future. Her child support should be modified to \$71 per month, based on her actual income. This is not a good cause variance under Civil Rule 90.3(c).

V. Child Support Order

- Ms. J is liable for modified ongoing child support for K in the amount of \$71 per month, effective February 1, 2014, and ongoing;

¹⁴ Exh. 1 at pg. 7.

¹⁵ Exh. 4.

¹⁶ Exh. 5 at pg. 1.

¹⁷ Exh. 9.

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated February 10, 2014 remain in full force and effect.

DATED this 30th 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 31st day of July, 2014.

By: Signed

Signature
Angela M. Rodell

Name
Commissioner

Title

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