

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

In the Matter of:)	
)	OAH No. 14-0655-CSS
T G. D)	CSSD No. 001129451
_____)	

DECISION AND ORDER

I. Introduction

T G. D appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 13, 2014. The obligee child is T, 17 years old. The other parent is T R. G. Ms. G's parents, S and C G, are also named custodians in this matter.

The hearing was held on May 21, 2014. Mr. D appeared by telephone, as did Andrew Rawls, Child Support Specialist. A telephone call placed to Ms. G's contact number went unanswered, so she did not participate in the hearing.

Based on the evidence and after careful consideration, Mr. D's child support obligation for T is modified to \$304 per month, effective December 1, 2013.

II. Facts

A. Procedural History

Mr. D's child support obligation for T was set at \$762 per month in May 2010.¹ On November 25, 2013, Mr. D requested a modification review.² On November 27, 2013, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ Mr. D did not submit income information. On March 13, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that reduced his child support to \$526 per month, effective December 1, 2013.⁴ Mr. D filed an appeal on April 23, 2014. He stated that he was currently unemployed and his only income consisted of unemployment benefits, from which child support payments were being deducted.⁵

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

B. Material Facts

Mr. D is employed in the oil industry. The closest he has been to year-round, full-time employment occurred in 2010, when he earned a total of \$34,443.67 during the first three quarters of the year.⁶ Since then he has worked part-time or on-call for several employers, but typically has been laid off for lack of work or hasn't been put on full-time.⁷ He broke his hand on one job and was discharged for misconduct for unknown reasons from another.⁸ In 2013, Mr. D earned \$15,808.80.⁹ This is the highest annual income he has had since 2010. In 2014, he worked a few weeks in March and testified he earned approximately \$1,700.

After the hearing, CSSD prepared a revised calculation based on Mr. D's total income in 2013. That figure, when inserted into CSSD's online child support calculator,¹⁰ results in a child support amount of \$304 per month.¹¹

Mr. D has four children younger than T: L, 14, who lives with her mother; T, 13, and A, 11. The two younger boys are the product of his marriage to M D, his current wife. They have been separated since 2009 and have had divided custody of the children – A living with M and T living with Mr. D. However, T went to stay with M in December 2013. Mr. D claimed that T would be coming back to live with him, but as of the date of the hearing, Mr. D had no specific date for T's return. Mr. D has two other cases before OAH regarding his support obligation for his younger children.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹² 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. D's child support has been \$762 per month since May 2010. Thus, a child support calculation of \$114.30 higher or lower than \$762 would be sufficient to warrant modification in this case.¹³

⁶ Exh. 7.

⁷ Exh. 7, pg. 7.

⁸ *Id.*

⁹ Exh. 7, pg. 1.

¹⁰ <https://webapp.state.ak.us/cssd/guidelinecalc/form>

¹¹ Exh. 9.

¹² AS 25.27.190(e).

¹³ \$762 x 15% = \$114.30.

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.¹⁴ In this case, the notice was issued on November 27, 2013, so any modification of Mr. D’s child support obligation for T would be effective as of December 1, 2013.¹⁵

In a child support matter, the person who files the appeal has the burden of proving that CSSD’s order was incorrect.¹⁶ Mr. D 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 13, 2014 is incorrect.¹⁷

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.” CSSD modified Mr. D’s child support to \$526 per month based on its determination that he would earn \$35,360 in 2014.¹⁸ CSSD arrived at that income figure by multiplying an hourly wage of \$17 times 2,080 hours, the number of hours a full-time employee typically works in one year.¹⁹

Mr. D argues essentially that the child support amount is too high because CSSD has used incorrect income figures for the calculation.²⁰ He testified at the hearing that he was waiting for a call to go to work for No Name. This testimony initially sounded like Mr. D thought he was going back to work full-time. However, after additional questioning, Mr. D clarified that he is employed on-call for No Name, and thus far in 2014, he had worked only about two weeks for the company; when he does return to work, clearly it will only be on a short term, on-call basis. Mr. D’s earnings as reported to the Alaska Department of Labor and Workforce Development confirm his testimony. Since 2010, Mr. D has earned the following annual amounts:

YEAR	WAGES	UNEMPLOYMENT	TOTAL
2013	\$15,808.80	\$1,970	\$17,778.80
2012	\$14,132.67	----	\$14,132.67

¹⁴ 15 AAC 125.321(d).

¹⁵ See Exh. 3.

¹⁶ 15 AAC 05.030(h).

¹⁷ 2 AAC 64.290(e).

¹⁸ Exh. 5, pg. 6.

¹⁹ This is based on a 40-hour work week times 52 weeks per year.

²⁰ Mr. D also stated that he wanted a DNA test, but he will have to file a petition with CSSD in order to initiate paternity disestablishment proceedings. See AS 25.27.166.

2011	\$320	\$9,983.96	\$10,303.96
2010	\$34,443.67	\$2,876.80	\$37,320.47 ²¹

After the hearing, CSSD filed a revised calculation based on Mr. D's total income in 2013, which includes his wages, unemployment benefits and Native corporation dividends. The total gross income figure, \$20,694.80, when inserted into CSSD's online child support calculator, yields a child support amount of \$304 per month.²²

The obligor's 2013 income is the correct figure to use because Mr. D is not employed full-time, nor is he receiving \$17 per hour.²³ He is currently working, but only part-time, and on-call since 2010, meaning he never really knows when he is going to be called for work. It is thus appropriate to use Mr. D's 2013 income for the modification because his work situation last year was most similar to his current employment situation, so 2013 best predicts his total annual income for 2014.

Mr. D also claimed that the child support amount is difficult for him to pay because he is trying to raise his younger children, A and T. It is true Mr. D is obligated to pay support for his other children, but neither child has lived with him since December 2013. A has lived with Mr. D's wife since the parents separated in 2009; T went to live with their mother in December 2013, and has not returned to Mr. D's home since then. His support obligation for A and T will be addressed in a separate case involving them.

IV. Conclusion

Mr. D met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated March 13, 2014 is incorrect. Mr. D's child support obligation for T has been recalculated using his 2013 income. The result is a child support calculation of \$304 per month. This figure is correct and should be adopted. The effective date of the modification is December 1, 2013, pursuant to the date CSSD notified the parties of the pending modification review.

V. Child Support Order

- Mr. D's child support obligation for T is modified to \$304 per month, effective

²¹ Exh. 7.

²² Exh. 9.

²³ See Exh. 7, pg. 7.

December 1, 2013;

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 13, 2014 remain in full force and effect.

DATED this 14th day of July, 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 1st day of August, 2014.

By: *Signed*

Signature

Kay L. Howard

Name

Administrative Law Judge

Title

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