

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

In the Matter of:)	
)	OAH No. 14-0656-CSS
T G. D)	CSSD No. 001114095
_____)	

DECISION AND ORDER

I. Introduction

T G. D appealed an Amended 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 L, 14 years old. The other parent is B G. K.

The hearing was held on May 21, 2014. Mr. D appeared by telephone, as did Andrew Rawls, Child Support Specialist. A telephone call was placed to Ms. K at her contact number before the hearing, but the person who answered the call said she was not there, so she did not participate in the hearing.

Based on the evidence and after careful consideration, Mr. D's child support obligation for L is modified to \$244 per month, effective December 1, 2013.

II. Facts

A. Procedural History

Mr. D's child support obligation for L was set at \$1,007 per month in 2007.¹ On November 25, 2013, Mr. D requested a modification review.² On November 29, 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 an Amended Modified Administrative Child Support and Medical Support Order that reduced his child support to \$420 per month, effective December 1, 2013.⁴ Mr. D appealed on April 29, 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 has been employed by the oil industry for eight years. Before that, he was a carpenter. His last 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. He has worked only a few weeks in 2014.

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 \$244 per month.¹¹

Mr. D has four children: T, 17; L, 14 (the child in this case); Z, 13; and C, 11. The two younger boys are his children with M D, his current wife. Mr. D and M have been separated since 2009 and have had divided custody of the children – C has lived with M, and Z has lived with Mr. D. However, Z went to stay with M in December 2013. Mr. D claimed at the hearing that Z would be coming back to live with him, but Mr. D did not know when that would occur.

Mr. D has two other CSSD cases involving his other children – one for T, and another for Z and C. All of these cases have been on appeal recently, and his support obligation for T has been set at \$304 per month. His case involving the younger boys was remanded to CSSD for further proceedings.

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 \$1,007 per

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).

month since November 2007. Thus, a child support calculation \$151.05 higher or lower than \$1,007 would be sufficient to warrant modification in this case.¹³

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 29, 2013, so any modification of Mr. D's child support obligation for L 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 is incorrect.¹⁶ Mr. D filed the appeal, so he must prove by a preponderance of the evidence that the Amended 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." Civil Rule 90.3(a)(1)(C) also states that an obligor 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"

CSSD modified Mr. D's child support to \$420 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 CSSD's calculation included an additional deduction from income for the child support Mr. D pays for his older child, T.

Mr. D argues essentially that the child support amount is too high because CSSD has used incorrect income figures for the calculation. 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.

¹³ \$1,007 x 15% = \$151.05.

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. 7.

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

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
2011	\$320	\$9,983.96	\$10,303.96
2010	\$34,443.67	\$2,876.80	\$37,320.47 ²⁰

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 \$244 per month.²¹ The calculation also includes the prior child deduction that Mr. D is paying to CSSD on behalf of T. The correct amount of the deduction is \$304 per month, as set in Mr. D's appeal involving that obligation.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 and 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, C and Z. It is true Mr. D is obligated to pay support for his other children, but neither child has lived with him since December 2013. C has lived with Mr. D's wife since the parents separated in 2009; Z went to live with their mother in December 2013, and has not returned to Mr. D's home since then. His support obligation for C and Z will be addressed in a separate case involving them.

²⁰ Exh. 7.

²¹ Exh. 9.

²² *In the Matter of T G. D*, OAH No. 14-0655-CSS, Proposed Decision issued on July 14, 2014.

²³ See Exh. 7, pg. 7.

IV. Conclusion

Mr. D met his burden of proving by a preponderance of the evidence that the Amended Modified Administrative Child Support and Medical Support Order dated March 13, 2014 is incorrect. Mr. D’s child support obligation for L has been recalculated using his 2013 income, and includes the correct prior child deduction of \$304 per month. The result is a child support calculation of \$244 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 L is modified to \$244 per month, effective December 1, 2013;
- All other provisions of the Amended Modified Administrative Child Support and Medical Support Order dated March 13, 2014 remain in full force and effect.

DATED this 16th 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 4th 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.]