

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

In the Matter of:	)	
	)	OAH No. 14-0666-CSS
F F	)	CSSD No. 001142817
_____	)	

**DECISION AND ORDER**

**I. Introduction**

F F is the father of T and S. D F is T and S’s mother. The Child Support Services Division (CSSD) issued an Administrative Child Support and Medical Support Order on November 25, 2013, that added S and ordered F to pay \$1,295 in monthly child support for both children.<sup>1</sup> Mr. F appealed the child support order on April 18, 2014.<sup>2</sup>

Hearings were held on May 21, 2014, and June 4, 2014. Mr. F appeared telephonically. Mrs. F did not appear. James Pendergraft, Child Support Specialist, represented CSSD, and participated telephonically.

The record was held open until June 18, 2014, to allow CSSD to submit an updated child support calculation based on information learned at hearing.<sup>3</sup>

Based on the evidence and after careful consideration, Mr. F’s child support is modified to \$551 per month for November and December 2013. Mr. F’s ongoing child support obligation is \$207 per month effective January 2014.

**II. Facts**

*A. Background*

F and D F are the biological parents of T. They adopted S in 2007, when they were still together as a family. On June 30, 2006, CSSD issued an Administrative Child Support and Medical Support Order that ordered Mr. F to pay \$128 in monthly child support for T from August 1, 2006 forward.<sup>4</sup> This child support amount was based upon the family receiving ATAP benefits.<sup>5</sup>

---

<sup>1</sup> Ex. 5.

<sup>2</sup> Ex. 6.

<sup>3</sup> CSSD’s post- hearing submissions; Ex. 12; Ex. 13.

<sup>4</sup> Ex. 1.

<sup>5</sup> Ex. 1, p. 7. Mr. F testified that he was unsure why he was the obligor in the 2006 order, because the family was still together as a unit. The 2006 child support order is outside the scope of this hearing.

The current administrative review was initiated by Idaho, where D F resides.<sup>6</sup> CSSD sent Notice of Adding a Child to a Support Order and Petition for Modification of Administrative Support Order to both parents on October 3, 2013.<sup>7</sup> Neither parent submitted income information.

On November 25, 2013, CSSD issued a Modified Administrative Child Support Order and Medical Support Order.<sup>8</sup> The order added S and set Mr. F's ongoing child support at \$1,295 per month.<sup>9</sup> CSSD calculated \$444 in arrears for S from September and October 2013.<sup>10</sup> CSSD calculated that amount using a gross income of \$75,275.20 for Mr. F.<sup>11</sup> Mr. F appealed, stating that: 1) T has been living with him since November 2013, 2) he lost his job, and 3) was recently incarcerated.<sup>12</sup>

CSSD's prehearing brief calculated a 2014 monthly child support amount of \$1,019, based on reported earnings of \$36.95 per hour, 30 hours per week.<sup>13</sup>

Mr. F was at No Name Correction Facility awaiting a court date, during the May 21, 2014 hearing.<sup>14</sup> The hearing was continued until June 4, 2014, in order for Mr. F to attend court and get a better idea of his likely living situation. Mr. F was released from No Name on May 23, 2014.<sup>15</sup>

At the time of his appeal Mr. F was working, but lost his job at No Name Construction after getting arrested again.<sup>16</sup> At the June 4, 2014, hearing Mr. F testified that he was currently unemployed and was just approved for unemployment. Mr. F testified credibly that he would be unable to get a high-paying construction job in the near future because of the recent arrest. Mr. F expected to earn \$394 in unemployment per week beginning in June 2014. Mr. F would not be making the income that CSSD used to calculate the November 2013 Modified Order.<sup>17</sup>

---

<sup>6</sup> Ex. 3.

<sup>7</sup> Ex. 4.

<sup>8</sup> Ex. 5.

<sup>9</sup> Ex. 5.

<sup>10</sup> Ex. 5.

<sup>11</sup> Ex, 5, p. 9.

<sup>12</sup> Ex. 6.

<sup>13</sup> Ex. 10.

<sup>14</sup> Ex. 3.

<sup>15</sup> F testimony, June 4, 2014 hearing.

<sup>16</sup> Ex. 6; F testimony.

<sup>17</sup> F testimony.

Mr. F testified and submitted evidence that he was arrested in June 2013. He was released to the halfway house, No Name Community Residential Center, from July to November 2013. No Name required him to pay 25% of his gross pay for room and board expenses.<sup>18</sup> Mr. F wanted CSSD to consider and give a deduction for the No Name expenses. Mr. F was released from the halfway house and was on an ankle monitor from November 2013 through March 4, 2014.

Mrs. F did not participate in either hearing and CSSD has no current income information for her.

After the hearing, CSSD recalculated child support based on divided custody. CSSD used Mr. F's actual 2013 earnings to calculate November and December 2013 child support of \$551 per month.<sup>19</sup> CSSD used Mr. F's 1<sup>st</sup> quarter 2014 earnings and his unemployment earnings to calculate ongoing support, beginning January 2014, at \$207 per month.<sup>20</sup> It did not include PFD earnings for Mr. F because of his recent incarceration.<sup>21</sup> CSSD imputed Idaho's \$7.25 hour minimum wage income to Mrs. F.<sup>22</sup>

*B. Divided custody*

Mr. F stated that T, and perhaps S, would end up living with him and his girlfriend at the start of the school year.<sup>23</sup> Prior to that, the plan was for T to visit and live with Mrs. F for five weeks in summer 2014.<sup>24</sup> F and D F are still coming up with a concrete plan for T and S's living arrangements.

It is clear from school documents and Mr. F's testimony that T has been living in Alaska with Mr. F since November 2013.<sup>25</sup>

**III. Discussion**

Mr. F has the burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.<sup>26</sup> He has met his burden.

---

18 Ex. 6.  
19 Ex. 12; Submission to record, June 16, 2014.  
20 Ex. 13, p.1.  
21 Ex. 13.  
22 Ex. 12.  
23 F testimony.  
24 F testimony.  
25 Ex. 6, p. 2.  
26 AS 25.27.190(e).

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>27</sup> Adding other children to a child support order is a material change in circumstances.<sup>28</sup> S, who was adopted by the F and D F in 2007 should be included in the modified child support order. However, the amended order must reflect the current and likely future, divided custody arrangement. Because both parents have custody, it must also consider Mrs. F’s income.

CSSD’s post-hearing child support calculations are reasonable. With no income information available, CSSD is authorized to use Idaho’s minimum wage to calculate Mrs. F’s income.<sup>29</sup> Mr. F’s testimony that he would be unable to find a job paying his prior \$36.95 an hour was credible, given his two recent incarcerations. At the time of hearing, his only anticipated income was unemployment at \$394 week. It is likely that Mr. F, with his construction background, will be able to secure employment with a wage above his unemployment earnings, but below his previous earnings at No Name. CSSD’s determination to use Mr. F’s high 1<sup>st</sup> quarter wages and his lower unemployment wages to compute an annual gross salary of \$30,962.98<sup>30</sup> seems very reasonable given his history and circumstances.

CSSD’s calculation of both arrears and November and December child support are accurate.

#### **IV. Conclusion**

Based on the evidence, the November 25, 2013, Modified Administrative Child Support Order and Medical Support Order is incorrect. CSSD’s post-hearing child support calculations<sup>31</sup> are adopted.

#### **V. Child Support Order**

- Mr. F’s child support obligation for November and December 2013 is \$551 per month;
- Mr. F has arrears of \$444 for S for September and October 2013;
- Mr. F has an ongoing child support obligation of \$207 per month, based on divided custody;

---

<sup>27</sup> AS 25.27.190(e).

<sup>28</sup> See 15 AAC 125.321(b)(2)(B).

<sup>29</sup> 15 AAC 125.050(d).

<sup>30</sup> Ex. 13.

<sup>31</sup> Ex. 12; Ex. 13; Submission to record.

- All other provisions of the November 25, 2013, Administrative Child Support and Medical Support Order remain in effect.

DATED July 4, 2014.

*Signed* \_\_\_\_\_  
Bride Seifert  
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 24<sup>th</sup> day of July, 2014.

By: *Signed* \_\_\_\_\_  
Signature  
Bride A. Seifert  
Name  
Administrative Law Judge  
Title

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