

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

IN THE MATTER OF:	)	
	)	OAH No. 14-0690-CSS
T J	)	CSSD No. 001119236
_____	)	

**DECISION AND ORDER**

**I. Introduction**

T J appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 4, 2014. The obligee child is L, 14. The custodian of record is T L. A.

The formal hearing was held on May 28, 2014. Mr. J appeared by telephone; Ms. A 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, Mr. J's child support is modified to \$50 per month, effective February 1, 2014, and ongoing, based on his actual income.

**II. Facts**

*A. Procedural History*

Mr. J's child support was set at \$1,153 per month in December 2010.<sup>1</sup> He requested a modification review on January 21, 2014.<sup>2</sup> On January 31, 2014, CSSD issued a Notice of Petition for Modification Review.<sup>3</sup> On April 4, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified his child support obligation to \$983 per month.<sup>4</sup> Mr. J appealed on April 30, 2014.<sup>5</sup>

*B. Material Facts*

Mr. J is currently unemployed. He previously worked for No Name for many years. His income as of 2010 averaged at or near \$100,000 annually. In December 2012, he lost his job

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

after being arrested on a felony charge that is alleged to have occurred 13 years ago. He reported that his case is scheduled to go to trial in August 2014.

During the pendency of his case, Mr. J is on a 3<sup>rd</sup> party release to a married couple, K and S N. He is required to be in the presence of one of them at all times, and Mr. J goes to work with Ms. N every day. Mr. J has applied for several jobs, particularly with employers on the No Name. Being on the No Name could potentially fulfill the conditions of his 3<sup>rd</sup> party release, but either the court has not approved his employment or the particular employer has not agreed with the supervision requirements of his release pending trial. The obligor said that some employers have even taken him off of their job lists in response to the charges against him.

### **III. Discussion**

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>6</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. J’s child support was set at \$1,153 per month in December 2010. Thus, a monthly calculation at least \$172.95 higher or lower than \$1,153 is needed to warrant modification in this case.<sup>7</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>8</sup> In this case, the notice was issued on January 31, 2014, so a modification would be effective as of February 1, 2014.<sup>9</sup>

As the person who filed the appeal, Mr. J has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect.<sup>10</sup>

Civil Rule 90.3(a)(1) provides that an obligor’s child support is to be calculated based on her or her “total income from all sources,” minus mandatory deductions such as taxes and Social Security. For this modification, CSSD calculated Mr. J’s child support at \$983 per month, based on his “ability to earn \$37 per hour.”<sup>11</sup> This hourly wage was apparently reported to CSSD by Mr. J’s former employer in response to an agency inquiry for the obligor’s employment

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<sup>6</sup> AS 25.27.190(e).

<sup>7</sup> \$1,153 x 15% = \$172.95

<sup>8</sup> 15 AAC 125.321(d).

<sup>9</sup> Exh. 3.

<sup>10</sup> 15 AAC 05.030(h).

<sup>11</sup> Exh. 5 at pg. 5.

information and history.<sup>12</sup>

CSSD's conclusion that Mr. J is capable of working and earning wages in excess of \$76,000 is incorrect. Mr. J is currently unemployable and he does not have any income. He is not voluntarily unemployed because his lack of work was caused by his arrest and the criminal charges filed against him. He would be working if he could, but the conditions of his release require that he have a 3<sup>rd</sup> party custodian. That condition could be met if he were to get a job on the No Name, because the only people he would be around would be his coworkers. But Mr. J would not be able to have his 3<sup>rd</sup> party custodian around all of the time if he got a lower paying job locally.

Thus, based on the record as a whole, Mr. J's child support should be set at the minimum amount of \$50 per month. Mr. J testified that his trial is scheduled for August 2014, but there is no guarantee it will go forward at that time. When it does occur, if he is convicted and incarcerated, the \$50 amount would be continued until his release. If he is acquitted at trial, his child support could be modified once again and returned to an amount based on the employment he obtains or his potential income if he delays returning to work and is found to be voluntarily and unreasonable unemployed.

#### **IV. Conclusion**

Mr. J met his burden of proving that the Modified Administrative Child Support and Medical Support Order dated April 4, 2014 is incorrect. Mr. J is unemployed and unemployable, and may remain so for the foreseeable future. His child support should be modified to \$50 per month, the minimum under Alaska law. This is not a good cause variance under Civil Rule 90.3(c).

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

- Mr. J is liable for modified ongoing child support for L in the amount of \$50 per month, effective February 1, 2014, and ongoing;

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<sup>12</sup> *Id.*

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 4, 2014 remain in full force and effect.

DATED this 1<sup>st</sup> day of July, 2014.

*Signed* \_\_\_\_\_  
Kay L. J  
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 18<sup>th</sup> day of July, 2014.

By: *Signed* \_\_\_\_\_  
Signature  
Kay L. J \_\_\_\_\_  
Name  
Administrative Law Judge  
Title

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