

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

In the Matter of:	)	
	)	OAH No. 14-0739-CSS
U D. P	)	CSSD No. 001150281
_____	)	

**DECISION AND ORDER**

**I. Introduction**

U D. P appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on April 28, 2014. The obligee child is O, 7. The custodian is M J. X.

The hearing was held on June 2, 2014. Mr. P appeared by telephone. Both of Ms. X's telephone numbers were out of service, so she could not be reached and thus did not participate. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded. The evidentiary record initially closed on July 7, 2014, but it was extended to July 14, 2014 at the request of Mr. P.

Based on the evidence and after careful consideration, Mr. P's child support obligation for O is modified to \$439 per month, effective March 1, 2014. Mr. P proved that his income has been reduced in 2014, but he did not establish that he supports prior biological children in the home or that he has a financial hardship.

**II. Facts**

*A. Procedural History*

Mr. P's child support obligation for O was set at \$605 per month in October 2012.<sup>1</sup> On February 21, 2014, Ms. X requested a modification review.<sup>2</sup> On February 26, 2014, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> Mr. P did not provide income information. On April 28, 2014, CSSD issued a Modified Administrative Child

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.

Support and Medical Support Order that set Mr. P's modified child support at \$723 per month.<sup>4</sup> Mr. P appealed on May 2, 2014, claiming that his income has been reduced since 2013.<sup>5</sup>

*B. Material Facts*

Mr. P is employed by No Name Services (NNRC). His wages are \$20.50 per hour, and in April 2014, he worked an average of 27.25 hours per week.<sup>6</sup>

In 2013, Mr. P's employer reported to the Alaska Department of Labor and Workforce Development (DOL) that his total income was \$56,700.29.<sup>7</sup> This is significantly higher than his 2012 income of \$36,915.50, and much higher than his expected 2014 income.<sup>8</sup> Mr. P testified that his 2013 income was higher than what he expects to earn in 2014 because he worked on "a lot of projects" in 2013, but he has not had as much work in the current year. As of April 27, 2014, Mr. P's gross year-to-date income was \$10,067.33.<sup>9</sup>

Mr. P testified that he has four children in the home, two of whom are older than O, the child in this case. Mr. P agreed to file birth certificates for the children in the home that show he is their biological father. He also agreed to file a list of his monthly expenses to determine if he has a financial hardship. He was given three weeks to file the evidence, and at his request, was given an additional week. The documents were due on June 27, 2014. CSSD filed a Submission to Record on July 11, 2014 that states Mr. P did not file any documents after the hearing.

**III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>10</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. P's child support has been \$605 per month since October 2012. Fifteen percent of that amount is \$90.75.<sup>11</sup> Thus, an amount of \$695.75 or higher, or \$514.25 or lower, would be sufficient to modify Mr. P's child support.

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<sup>4</sup> Exh. 4.

<sup>5</sup> Exh. 5.

<sup>6</sup> Mr. P's paystubs show that he worked 27.5 hours during the April 20<sup>th</sup> pay period, and 27 hours in the April 27<sup>th</sup> pay period. The total is 54.5 hours, which averages to 27.25 hours per pay period. Exh. 5 at pgs. 4-7.

<sup>7</sup> Exh. 7 at pg. 1.

<sup>8</sup> *Id.*

<sup>9</sup> Exh. 5 at pg. 6.

<sup>10</sup> AS 25.27.190(e).

<sup>11</sup> \$605 x .15 = \$90.75.

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>12</sup> In this case, the notice was issued on February 26, 2014, so any modification of Mr. P's child support obligation for O would be effective as of March 1, 2014.<sup>13</sup>

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.<sup>14</sup> Mr. P filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated April 28, 2014 is incorrect.<sup>15</sup>

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." In its modification review, CSSD prepared a child support calculation with Mr. P's 2013 income of \$56,700.29 to determine if a modification was warranted.<sup>16</sup> The calculation resulted in a child support amount of \$723 per month, which CSSD adopted in the modification order.<sup>17</sup> Before the hearing, CSSD revised the calculation to \$572 per month.<sup>18</sup> This number was obtained using an annual income amount of \$42,640, which was a figure showing on Mr. P's paystubs in a box labeled "Annual Salary."<sup>19</sup>

Mr. P testified that he is not working as much in 2014 as he was in 2013, and he corroborated his testimony with documentary evidence. Mr. P's three most recent paystubs show that he has been working only 27.25 hours per week, and that as of April 27<sup>th</sup>, his total year-to-date gross income was only \$10,067.33.<sup>20</sup> On an annual basis, that amount would yield a total income figure of \$30,201.96.<sup>21</sup> This amount is similar to, and consistent with, the information provided to the DOL by Mr. P's employer. His 2014 first quarter income was reported to be \$7,689.44,<sup>22</sup> which, on an annual basis, results in total gross income of \$30,757.80.<sup>23</sup>

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<sup>12</sup> 15 AAC 125.321(d).

<sup>13</sup> See Exh. 3.

<sup>14</sup> 15 AAC 05.030(h).

<sup>15</sup> 2 AAC 64.290(e).

<sup>16</sup> Exh. 5 at pg. 8.

<sup>17</sup> Exh. 4.

<sup>18</sup> Exh. 8.

<sup>19</sup> See Exh. 5 at pg. 4.

<sup>20</sup> Exh. 5 at pg. 6.

<sup>21</sup>  $\$10,067.33 \div 4 \text{ months} = \$2,516.83 \text{ per month} \times 12 = \$30,201.96.$

<sup>22</sup> Exh. 7 at pg. 1.

<sup>23</sup>  $\$7,689.44 \div 3 \text{ months} = \$2,563.15 \text{ per month} \times 12 = \$30,757.80.$

Mr. P's child support should be based on his actual income, not on the figure reflected in the "Annual Salary" box on his paystubs. That figure is clearly not Mr. P's actual income. In fact, it is an amount that results from multiplying Mr. P's hourly wage of \$20.50 by 2,080 hours, the number of hours a full-time employee typically works in one year.<sup>24</sup> It is simply a measure of what Mr. P's income *would be* if he worked 40 hours per week year-round. That is not the case for Mr. P, and his child support should not be based on that fictional number.

Using Mr. P's first quarter earnings, his estimated annual income is \$30,757.80. When this figure is inserted into CSSD's online child support calculator,<sup>25</sup> it results in a child support amount of \$439 per month.<sup>26</sup> This is the correct child support amount, based on Mr. P's actual 2014 income.

Mr. P testified that he also has four children in the home, two of whom are older than O. Were he to establish that these are his biological children, and they do actually live with him, Mr. P may be entitled to a deduction from income to reflect the support he provides in the home for the two older children.<sup>27</sup> However, Mr. P did not submit any evidence after the hearing, so he cannot be given the deduction from income. He also did not submit a list of expenses to establish that he has a financial hardship. Thus, the calculation of \$439 per month remains correct.

#### **IV. Conclusion**

Mr. P met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated April 28, 2014 is incorrect. Mr. P's child support has been recalculated based on his actual income in 2014 and the result is a child support amount of \$439 per month, effective March 1, 2014. Mr. P did not meet his burden of proof regarding having prior children in the home, or of having a financial hardship, so he is not entitled to the prior child deduction or a variance based on hardship. Mr. P's child support should be modified to \$439 per month, effective March 1, 2014.

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

- Mr. P's child support obligation for O is modified to \$439 per month, effective

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<sup>24</sup> \$20.50 x 2080 = \$42,640.

<sup>25</sup> <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

<sup>26</sup> Attachment A.

<sup>27</sup> Civil Rule 90.3(a)(1)(D).

March 1, 2014;

- All other provisions of the Modified Administrative Child Support and Medical Support Order dated April 28, 2014 remain in full force and effect.

DATED this 4<sup>th</sup> day of August, 2014.

*Signed*

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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 22<sup>nd</sup> 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.]