

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

In the Matter of:	)	
	)	OAH No. 14-0914-CSS
K R. P	)	CSSD No. 001151942
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	)	

**DECISION AND ORDER**

**I. Introduction**

Custodial parent, N B. D, filed an appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on April 10, 2014. The obligee child is B, 8 years of age.

The formal hearing was held on June 19, 2014. Both parties appeared by telephone. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record as a whole and after careful consideration, CSSD’s Modified Administrative Child Support and Medical Support Order is affirmed. Ms. D did not meet her burden of proof. Mr. P’s child support remains at \$208 per month; he would be entitled to the visitation credit only if he exercised visitation in excess of 27 consecutive days.

**II. Facts**

*A. Procedural History*

Mr. P’s child support obligation for B was set at \$208 per month in 2009.<sup>1</sup> In February 2014, Mr. P requested a modification review and CSSD notified Ms. D.<sup>2</sup> Mr. P did not provide financial information. On April 10, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. P’s child support order by adding a visitation credit, but it did not modify the ongoing child support amount.<sup>3</sup> Ms. D appealed on April 17, 2014, asserting that B is not safe with Mr. P.<sup>4</sup>

*B. Material Facts*

Mr. P and Ms. D are the parents of B, who is 8 years old. B lives full-time with his mother.

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

Mr. P is currently in a 6-month rehabilitation program that is scheduled to end later this summer. Before entering the program, he was incarcerated for 6 months and was released on February 18, 2014. His last employment was at a restaurant in 2007. He testified that since that time, he has been homeless and “running amok.” It was after he was released from jail that he entered rehab voluntarily. Mr. P has not had any income reported to the Alaska Department of Labor and Workforce Development for many years.<sup>5</sup>

### **III. Discussion**

Mr. P requested the modification review, but he did not provide any income information, so CSSD did not adjust his child support amount of \$208 per month. Rather, CSSD’s modification only changed the order’s visitation credits – CSSD added a provision that indicates Mr. P would be entitled to a visitation credit if he exercises extended visitation with B in excess of 27 consecutive days. Ms. D appealed CSSD’s determination, claiming that B is not safe with Mr. P. As the person who filed the appeal she must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.<sup>6</sup>

#### *A. Extended Visitation Credit*

Civil Rule 90.3(a)(3) provides that a tribunal setting child support may allow an obligor parent to “reduce child support payments by up to 75% for any period in which the obligor parent has extended visitation of over 27 consecutive days.” This provision of the Rule is not a visitation order. It simply allows that an obligor parent who actually has extended visitation with a child, typically during the summer months, may request a credit against their support obligation if the visitation exceeded 27 days. CSSD has recently been adding this provision to child support orders that are being reviewed for modification purposes. If the order is not modified in any other way, at least the visitation credit can be added so that in the future, a parent who has extended visitation can apply for the credit without having to first request a modification to get the provision added to the order.

Ms. D’s concerns that the modification order in this case provides for the visitation itself are unfounded. The order simply provides that if Mr. P ever exercises extended visitation in the future, he would be allowed to request the credit. The question *whether* he will be allowed to

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<sup>5</sup> Exh. 7.

<sup>6</sup> 2 AAC 64.290(e).

exercise that visitation in the future is between the parties and the court. CSSD's order allowing for the credit in the future does not change that, nor does it alter his current arrears amount.

*B. Mr. P's Child Support Amount*

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>7</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," minus mandatory deductions such as taxes and Social Security. 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 \$208 per month since 2009. That order was based on his previous four quarters of earnings at that time.<sup>8</sup>

Although Mr. P requested the modification, CSSD's order did not adjust his ongoing child support amount. Mr. P acknowledged at the hearing that he had not been employed for several years because he was "running amok," incarcerated, and now in a rehab program. It is expected that as a condition of the program, he will be returning to the job market in the near future. When he is once again working and earning wages, his child support obligation would be subject to modification. In the meantime, his monthly support obligation should remain unchanged.

**IV. Conclusion**

Ms. D did not meet her burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated April 10, 2014 is incorrect. CSSD may add the provision allowing for an extended visitation credit to Mr. P's child support order, and he would be entitled to request it if he ever exercises extended visitation with B in the future. At this point, Mr. P's return to the job market appears imminent and his unemployment is temporary. Thus, his child support obligation should remain unchanged at this time. CSSD's modification order adjusting only the visitation credit should be affirmed.

**V. Child Support Order**

- The Modified Administrative Child Support and Medical Support Order dated

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<sup>7</sup> AS 25.27.190(e).

<sup>8</sup> Exh. 1 at pg. 8.

April 10, 2014 is AFFIRMED;

- The provision allowing for the extended visitation credit is affirmed;
- Mr. P's child support for B shall remain at \$208 per month.

DATED this 9<sup>th</sup> date of July, 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 28<sup>th</sup> day of July, 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.]