

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

In the Matter of:	)	
	)	OAH No. 14-0923-CSS
C P. K	)	CSSD No. 001058554
_____	)	

**DECISION AND ORDER**

**I. Introduction**

C P. K filed an appeal of a Modified Administrative Child Support and Medical Support Order the Child Support Services Division (CSSD) issued on January 28, 2014. The obligee child is L, 18 years of age. The custodial parent is S K. Q.

The formal hearing was held on July 17, 2014. Both parties appeared by telephone, as did Robert Lewis, CSSD’s representative. The hearing was recorded.

Based on the record as a whole, Mr. K’s child support is modified to \$298 per month, effective October 2013, and modified to \$361 per month, effective January 2014, and ongoing.

**II. Facts**

*A. Procedural History*

Mr. K’s child support for L was set at \$50 per month in March 2012.<sup>1</sup> On September 10, 2013, Ms. Q requested a modification review and CSSD notified both parties of the petition on September 17, 2013.<sup>2</sup> On January 28, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. K’s child support to \$310 per month, effective October 2013.<sup>3</sup> He appealed on May 6, 2014, stating he appealed because he is incarcerated.<sup>4</sup>

*B. Material Facts*

Mr. K is currently under the jurisdiction of the Alaska Department of Corrections. However, he is not physically incarcerated; rather, he lives with his father, which is made possible because he wears an ankle monitor. Mr. K expects to be released in mid-2015.

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1 Exh. 1.  
2 Exhs. 2-3.  
3 Exh. 5.  
4 Exh. 7.

Mr. K has been employed while he has been living with his father. According to the Alaska Department of Labor and Workplace Development (DOL), he earned \$19,547.91 during 2013, most of it while working for a scrap metal and recycling company.<sup>5</sup>

CSSD prepared a child support calculation for 2013 based on his income that year. CSSD included the PFD of \$900 in his income, as well as other taxable income of \$225, which appears to be Native corporation dividends. Subtracting mandatory monthly deductions such as taxes and Social Security, Mr. K's adjusted annual (net) income for 2013 was \$17,889.87, which results in a child support calculation of \$298 per month.<sup>6</sup>

Mr. K also earned \$7,899.76 from the recycling company during the first quarter of 2014, but that work ended before the hearing. Mr. K testified that he had recently worked at a bar, but the circumstances had not been desirable, so he left his job there. He began working as a cook one week prior to the hearing. He was working 6 hours per day for five days per week, at the rate of \$10.00 per hour. On an annual basis, that equals \$15,600 in wages.<sup>7</sup> When Mr. K's first quarter 2014 income is added, it results in estimated wages of \$23,499.76. Adding the PFD of \$1,884 and his Native corporation dividend of \$57.00 yields an estimated gross income figure \$25,440.76. This amount yields a child support calculation of \$361 per month.<sup>8</sup>

Mr. K testified he has to pay \$432 per month for the ankle monitor, plus occasional home expenses if his father cannot afford them. These expenses include the electricity bill of \$180 and the natural gas bill of \$40.00 per month. Also, Mr. K has personal expenses of \$50 for a bus pass, \$60 for a cell phone, and approximately \$180 for food.

Mr. K has a daughter, but she is apparently younger than L. Mr. K stated he tries to buy her food, but he also referred to his wife, saying she is not getting support for the child, so her current circumstances are unknown.

Mr. K agreed to provide his 2014 paystubs after the hearing, but CSSD received no additional documents from him.

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<sup>5</sup> Exh. 9.

<sup>6</sup> Exh. 10 at pg. 1.

<sup>7</sup> 6 hrs. x 5 days per week = 30 hours x \$10 = \$300 per week x 52 weeks = \$15,600.

<sup>8</sup> Attachment A.

### III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”<sup>9</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>10</sup> In this case, the notice was issued on September 17, 2013, so a modification would be effective as of October 1, 2013.<sup>11</sup> In a child support matter, the person who files the appeal has the burden of proving that CSSD’s order was incorrect.<sup>12</sup> Mr. K filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.<sup>13</sup>

#### A. *Total Income from all Sources*

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. CSSD correctly calculated Mr. K’s 2013 child support at \$298 per month, based on his total 2013 income and deductions.<sup>14</sup>

For 2014, CSSD estimated Mr. K’s income by multiplying Mr. K’s first quarter earnings at the recycling company times four quarters to yield estimated annual income of \$31,599.04.<sup>15</sup> This income figure is incorrect because Mr. K was no longer working at the recycling company by the middle of 2014, so CSSD’s calculation has been replaced by Attachment A, which determined Mr. K’s estimated income for 2014 to be \$25,440.76, which yields a child support amount of \$361 per month.

Mr. K suggested during the hearing that he cannot afford the child support amount because of the other bills he has to pay. To the extent that this is a request for a reduction based on financial hardship under Civil Rule 90.3(c), it is denied. The upward modification of this child support order has created some financial stress for Mr. K, but Alaska law dictates that his

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<sup>9</sup> AS 25.27.190(e).  
<sup>10</sup> 15 AAC 125.321(d).  
<sup>11</sup> Exh. 3.  
<sup>12</sup> 15 AAC 05.030(h).  
<sup>13</sup> 2 AAC 64.290(e).  
<sup>14</sup> Exh. 10 at pg. 1.  
<sup>15</sup> Exh. 11.

duty to his biological child takes priority over other debts and obligations.<sup>16</sup> L is entitled to receive child support in an amount based on Mr. K's ability to pay, as calculated from his income pursuant to Civil Rule 90.3. That obligation has been correctly determined under the rule, and there is no evidence in the record that shows his child support obligation should be reduced.

#### **IV. Conclusion**

Mr. K met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect. His child support has now been correctly determined to be \$298 per month from October 2013 through December 2013, and \$361 per month, effective January 1, 2014, and ongoing. These figures are correct and should be adopted.

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

- The child support amount in the Modified Administrative Child Support and Medical Support Order dated January 28, 2014 is vacated;
- Mr. K's child support for L is modified to \$298 per month, effective October 2013, and further modified to \$361 per month, effective January 1, 2014, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 28, 2014 remain in full force and effect.

DATED this 6<sup>th</sup> day of January, 2015.

*Signed* \_\_\_\_\_

Kay L. Howard  
Administrative Law Judge

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<sup>16</sup> See *Dunn v. Dunn*, 952 P.2d 268, 271 (Alaska 1998).

**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 26th day of January, 2015.

By: Signed  
Signature  
Kay L. Howard  
Name  
Administrative Law Judge  
Title

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