

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

In the Matter of: )  
 )  
S G. L ) OAH No. 14-0992-CSS  
 ) CSSD No. 001096254  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

The Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order changing the monthly child support amount S L was required to pay to \$445 per month. Mr. L appealed. A hearing was held on July 3, 2014. Mr. L and James Pedergraft, CSSD child support specialist, appeared telephonically. B M, custodial parent, did not participate.

Based on the evidence and after careful consideration, Mr. L's ongoing child support is modified to \$110 per month beginning May 1, 2014.

**II. Facts**

The following facts are established by a preponderance of the evidence.

S L is the father of N,<sup>1</sup> who lives with his mother, Ms. M.<sup>2</sup> On April 1, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On May 22, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order.<sup>4</sup> The order was based on a 40 hour work week and a \$15 per hour wage.<sup>5</sup> On May 30, 2014, Mr. L appealed the modified child support order, stating that he has not been working for almost a year and he no longer makes \$15 per hour.<sup>6</sup>

Mr. L is no longer regularly employed. He lost his job last June when he was incarcerated. His employer will not hire him back, nor will the other general store in town. He cannot do hard labor, because he has sciatica, and is awaiting neurosurgery.<sup>7</sup> His doctor

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<sup>1</sup> (DOB 00/00/1999).  
<sup>2</sup> Exhibit 4.  
<sup>3</sup> Ex. 2.  
<sup>4</sup> Ex. 4.  
<sup>5</sup> Pendergraft testimony; Ex. 4; Ex. 6.  
<sup>6</sup> Ex. 5.  
<sup>7</sup> L testimony.

originally put him on a work restriction, but it is no longer in effect. Mr. L stated he is struggling since his incarceration, cannot find employment, and is currently living with his mother.

Mr. L lives in No Name, with a large influx of seasonal fishing jobs. Mr. L testified credibly that he has been unable to secure any type of regular employment with the fishing industry and job prospects get even worse when the season ends. Mr. L gets occasional odd jobs, usually making \$10 hour, with an average monthly earning of \$500 - \$600.

CSSD calculated a monthly child support obligation of \$445, based on a gross income of \$31,200.<sup>8</sup> CSSD used Mr. L's 2012 and 2013 wages from No Name Company to calculate the modified child support order, which it received from the Department of Labor.<sup>9</sup> Mr. L and Labor both show that Mr. L stopped working at No Name in June of 2013. He is not receiving unemployment.<sup>10</sup>

During the hearing, CSSD recalculated child support using an income of \$600 per month.<sup>11</sup> Under this calculation, Mr. L's ongoing child support amount would be \$110 per month. CSSD stated that it was not opposed to setting the modified amount at \$110 per month.

### **III. Discussion**

As the person who filed the appeal, Mr. L has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect.<sup>12</sup> He has met that burden.

Child support obligations are determined under Civil Rule 90.3.<sup>13</sup> Under the rule, child support is calculated as an amount equal to the adjusted annual income of the non-custodial parent multiplied by a percentage specified in Civil Rule 90.3.<sup>14</sup> For a non-custodial parent of one child, like Mr. L's, this obligation is set at 20 percent of his adjusted annual income.

Here, CSSD's modified order estimated Mr. L's current income based on outdated wage information.<sup>15</sup> Mr. L is no longer working at No Name and is unable to find a job. He testified credibly that he gets occasional \$10 per hour odd jobs. Calculating ongoing support using an

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<sup>8</sup> Ex. 4.

<sup>9</sup> Ex. 8. Pendergraft testimony. Ex. 6 shows Mr. L's actual annual income: 2011 = \$1,131.60, 2012 = \$30,138.73, 2013 = \$13,153.38.

<sup>10</sup> L testimony; Ex. 6 shows Mr. L's last unemployment income was in January 2014.

<sup>11</sup> Per Mr. Pendergraft's testimony, this would equal a gross income of \$7,200, and an adjusted annual income of \$6,604.56. CSSD did not include PFD because of Mr. L's recent incarceration.

<sup>12</sup> 15 AAC 05.030(h).

<sup>13</sup> 15 AAC 125.010 adopts Civil Rule 90.3 as the agency's child support guidelines.

<sup>14</sup> Alaska R. Civ. Pro. 90.3(a).

<sup>15</sup> Exhibit 6.

annual gross income of \$7,200 is reasonable given Mr. L's recent incarceration, inability to find work, and back issues. CSSD did not oppose setting the modified child support obligation at \$110 monthly.

**IV. Conclusion**

Based on the evidence, the May 22, 2014, Modified Administrative Child Support Order and Medical Support Order is incorrect. Mr. L's is required to notify CSSD if he secures full time employment or he has a material change in income.

**V. Child Support Order**

1. Mr. L's modified ongoing support for N is set at \$110 per month, beginning May 1, 2014.
2. All other provisions of CSSD's May 22, 2014, Modified Administrative Child Support and Medical Support Order remain in effect.

DATED: July 21, 2014.

By: 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 12<sup>th</sup> day of August, 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.]