

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

In the Matter of:)	
)	OAH No. 14-1123-CSS
P A. C)	CSSD No. 001159950
_____)	

DECISION AND ORDER

I. Introduction

The obligor, P A. C, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on January 27, 2014. The obligee child is Z, 5 years old. The custodian is B N. T. The hearing was held on July 30, 2014. Both parties participated, along with CSSD’s Child Support Specialist, Robert Lewis.

Based on the record as a whole and after careful consideration, Mr. C’s child support for Z is modified to \$116 per month, effective November 1, 2013. This amount is further modified to \$130 per month, effective January 1, 2014, and further modified to \$162 per month, effective May 1, 2014, and ongoing.

II. Facts

A. Procedural History

Mr. C’s child support for Z was set at \$197 per month in December 2009.¹ On October 30, 2013, Mr. C requested modification of his support order.² He did not file income information. On January 27, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order, but the order did not adjust his child support amount, which remained at \$197 per month.³ The order merely added a provision allowing for a visitation credit in the event he exercised extended visitation in the future. Mr. C appealed on February 13, 2014.⁴

Prior to the hearing, CSSD submitted a revised calculation of \$145 per month for 2013 and \$195 per month for 2014.⁵ During the hearing, Mr. C testified primarily that he cannot afford the \$197 per month child support order. He stated that he had recently changed to a job in

1 Ex. 1.
2 Ex. 3.
3 Ex. 5.
4 Ex. 6.
5 Ex. 10.

which he has a better chance of improving himself and earning more money, but he is working on a commission basis only and, as a result, he currently does not have any income. The hearing then moved into a discussion of the difficulty Mr. C faces in making any headway toward reducing his child support arrears. He has two other cases being administered by CSSD, so the payments collected, even if his support obligation was the minimum \$50 per month, would remain relatively small.

The parties then agreed to set Mr. C's modified child support for Z at the minimum amount allowed under Alaska law of \$50 per month, and CSSD did not object. The parties were informed that a consent order modifying Mr. C's child support to \$50 per month would be issued and the hearing was closed. However, a notice and order rescinding approval of the parties' agreement was issued on September 16, 2014 by the administrative law judge. New calculations based on Mr. C's actual income figures were proposed as follows: \$116 per month, effective November 1, 2013; \$130 per month, effective January 1, 2014, and \$162 per month, effective May 1, 2014, and ongoing. The parties were given the opportunity to respond to the notice and order until September 27, 2014, but no response was filed by Mr. C, Ms. T or CSSD.

B. Material Facts

The Alaska Department of Labor and Workplace Development (DOL) indicates that Mr. C worked at No Name, LLC, for about one year, beginning in early 2013.⁶ His total earnings in 2013 were \$11,153.03.⁷ In early 2014, Mr. C began working in the real estate field on a commission-only basis, so his estimated 2014 earnings are currently unknown. Thus, his 2013 earnings represent the best indicator of his ability to pay child support for Z.

Mr. C has two children older than Z, the oldest of whom lives in Mr. C's home. Mr. C has also been paying support for his next older child, who was adopted effective May 1, 2014. Mr. C is entitled to a deduction for each of two prior children. These deductions have been calculated using Mr. C's 2013 income, plus the \$900 PFD, which yields total annual income of \$12,053.03.⁸

The deduction for the child in Mr. C's home is \$182 per month in 2013 and \$203 per month in 2014. The deduction for the next child older than Z is \$146 per month in 2013 and

⁶ Ex. 7.

⁷ *Id.*

⁸ \$11,153.03 + \$900 = \$12,053.03.

\$162 per month from January through April 2014.⁹ Thus, incorporating the deductions for 2013 and 2014, Mr. C's child support for Z is calculated at \$116 per month in 2013, effective in November and December; and \$130 per month in 2014.¹⁰ However, because the second child was adopted effective May 1, 2014, Mr. C is no longer obligated to pay support for this child as of that date, and is no longer entitled to the deduction for paying that support. As a result, he is only allowed the \$203 per month deduction for the prior child living in his home. Therefore, his support obligation for Z as of May 1, 2014, is correctly calculated at \$162 per month.

II. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ 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. C's child support obligation was set at \$197 in 2009; 15% of that amount is \$29.55.¹² Thus, a child support calculation lower than \$167.45¹³ would be necessary for a downward modification in this case.

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.¹⁴ In this case, the notice was issued on October 30, 2013, so the modification is effective November 1, 2013.¹⁵

In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.¹⁶ Mr. C 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.¹⁷

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. Other deductions concern child support paid for prior children. Civil Rule

⁹ The total deduction for each year is the sum of the deduction for each child in that year, *i.e.*, \$182 + \$146 = \$328 for 2013. For 2014 the total deduction is \$203 + \$162 = \$365.

¹⁰ Attachments A & B.

¹¹ AS 25.27.190(e).

¹² \$197 x 15% = \$29.55.

¹³ \$197 - \$29.55 = \$167.45.

¹⁴ 15 AAC 125.321(d).

¹⁵ Ex. 4.

¹⁶ 15 AAC 05.030(h).

¹⁷ 2 AAC 64.290(e).

90.3(a)(1)(D) states that a parent is entitled to a deduction from income for supporting prior children living in the parent's home. In addition to the deduction for supporting prior children in the home, Civil Rule 90.3(a)(1)(C) states that an obligor parent is entitled to a deduction from income for "child support . . . payments arising from prior relationships which are required by other court or administrative proceedings and actually paid" Both of these deductions are applicable in Mr. C's case, and they have been included in the calculations. However, the deduction for the child support he has paid for his child who was adopted on May 1, 2014 may be included only through April 2014. Hence the new ongoing calculation as of May 2014.

Mr. C's child support is now correctly calculated at \$116 per month for November and December 2013; \$130 per month for January through April 2014; and \$162 per month, effective May 1, 2014, and ongoing.

IV. Conclusion

Mr. C met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 27, 2014 is incorrect. Mr. C's actual total income in 2013 yields a child support obligation for Z of \$116 per month for November and December 2013; \$130 per month for January through April 2014; and \$162 per month, effective May 1, 2014, and ongoing. These figures are correct and should be adopted as of November 1, 2013.

V. Child Support Order

- Mr. C is liable for modified child support for Z in the amount of \$116 per month for November and December 2013; \$130 per month for January through April 2014; and \$162 per month, effective May 1, 2014, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 27, 2014 remain in full force and effect.

DATED this 20th day of October, 2014.

Signed

Rebecca L. Pauli
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 7th day of November, 2014.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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