

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

IN THE MATTER OF:)	
)	OAH No. 14-1127-CSS
K K. J)	CSSD No. 001157404
_____)	

DECISION AND ORDER

I. Introduction

The custodian, L R. S, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in her case on January 14, 2014. This order modified Mr. J’s child support from \$800 per month to \$311 per month effective October 1, 2013. The obligee child is H, 8. The obligor is K K. J.

The hearing was held on August 4, 2014. Ms. S appeared by telephone. Mr. J did not participate. He did not provide a telephone number where he could be reached. The record establishes that he received the Notice of Hearing.¹ James W. Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded.

When CSSD issued its order, it annualized Mr. J’s income using the information available at the time, the first three quarters of earnings reported to the Alaska Department of Labor. By the time of the hearing, Mr. J’s actual 2013 income was available. Child support calculated using an obligor’s actual income is presumed to be correct. Using Mr. J’s actual 2013 income results in a \$331 monthly child support obligation for one child effective October 1, 2013. Mr. J’s January 14, 2014 Modified Administrative Child Support and Medical Support Order should be \$331 per month.

II. Facts

Mr. J’s child support obligation for H was set at \$800 per month in August 2009 pursuant to an Amended Administrative Child Support and Medical Support Order issued by CSSD.² Mr. J requested a modification review in September 2013. On September 23, 2013, CSSD issued a Notice of Petition for Modification of Administrative Support Order.³ On January 23, 2014,

¹ As evidenced through a signed and returned “green card.”
² Exhibit 9.
³ Exhibit. 1.

CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. J's child support to \$311 per month for one child, effective October 1, 2013.⁴

The \$311 is based upon annualizing Mr. J's first three quarters of reported earnings, plus the PFD and any dividend earned less allowable deductions.⁵

Ms. S appealed on February 4, 2014, claiming that the amount of child support ordered was insufficient to provide for H.⁶

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁷ If the newly calculated child support amount is more than 15% different than the previous order, Civil Rule 90.3(h)⁸ assumes "material change in circumstances" exists and the order may be modified. Mr. J's support was set at \$800 per month in August 2009.⁹ Child support that is \$680 per month will be presumed to be a material change in circumstance. A modification is effective beginning the month after the parties are served with notice that a modification has been requested, so this modification is effective as of October 1, 2013.¹⁰

As the person who filed the appeal in this case, Ms. S has the burden of proving by a preponderance of the evidence that the agency's Modified Administrative Child Support and Medical Support Order is incorrect.¹¹

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." When it initially calculated Mr. J's income from all sources, for 2013 CSSD only had available the first three quarters of wages reported to the Alaska Department of Labor. CSSD extrapolated this amount adding \$900 for the PFD and \$772 in other taxable income to arrive at a total gross income for purposes of child support:

⁴ Exhibit 3.

⁵ Exhibit 5 at 4 – 6.

⁶ Exhibit 4.

⁷ AS 25.27.190(e).

⁸ Civil Rule 90.3 contains the guidelines for calculating child support in Alaska. The rule applies to all proceedings in which support is to be determined, whether in court or before CSSD, the administrative agency.

⁹ Exhibit 9.

¹⁰ 15 AAC 125.321(d).

¹¹ 15 AAC 05.030(h).

\$21,745.03.¹² Using this amount less the standard allowable deductions, CSSD calculated a monthly child support payment for one child at \$311 per month.¹³

When calculating ongoing child support, determining an obligor's annual income for purposes of future child support is "necessarily...speculative because the relevant income figure is expected future income."¹⁴ However, child support determinations calculated under Civil Rule 90.3 from an obligor's actual income figures are presumed to be correct. Due to the passage of time CSSD now has available to it Mr. J's actual reported earnings for 2013.¹⁵ In 2013, he had earnings reported to the Alaska Department of Labor totaling \$21,544.50.¹⁶ This increases his gross income for purposes of child support to \$23,216.50.¹⁷ Using this figure and CSSD's online child support calculator, Mr. J's child support obligation for H should be \$331 per month effective October 1, 2013.¹⁸

Ms. S was unable to identify other sources of income for Mr. J. At the hearing she agreed that, when calculated according to Alaska Rule Civil Procedure 90.3(a), a child support amount of \$331 per month effective October 1, 2013 is correct.

IV. Conclusion

When CSSD made its initial calculation, Mr. J's 2013 annual earnings as reported to Alaska Department of Labor were not yet available. Using his actual income results in a child support obligation of \$331 per month under Civil Rule 90.3(a). This figure should be adopted, effective October 1, 2013.

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¹² Exhibit 5 at 5.
¹³ Exhibit 5 at 6.
¹⁴ See Civil Rule 90.3, Commentary III.E.
¹⁵ Exhibit 8.
¹⁶ *Id.*
¹⁷ Attachment A
¹⁸ <https://webapp.state.ak.us/cssd/guidelinecalc/login>.

V. Child Support Order

- Mr. J's child support obligation for He is modified to \$331 per month, effective October 1, 2013, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 14, 2014 remain in full force and effect.

DATED this 6th day of August, 2014.

By: 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 25th day of August, 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.]