

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

In the Matter of:)
)
K G. N) OAH No. 14-1347-CSS
) CSSD No. 001180764
_____)

DECISION AND ORDER

I. Introduction

K G. N filed an appeal of a Modified Administrative Child Support and Medical Support Order the Child Support Services Division (CSSD) issued on March 25, 2014. The obligee child is T, 4 years of age. The custodial parent is B M. J.

The formal hearing was held on September 18, 2014. Both parties appeared by telephone, as did Joe West, CSSD’s representative. The hearing was recorded.

Based on the record as a whole and after careful consideration, the child support figure in CSSD’s Modified Administrative Child Support and Medical Support Order is vacated. Mr. N met his burden of proving the support amount is incorrect because he is not working full-time at the minimum wage. His modified child support should be calculated based on his most recent actual income in 2013, which results in a modified support amount of \$75 per month.

II. Facts

A. Procedural History

Mr. N’s child support obligation for T was set at \$50 per month in March 2012.¹ On December 27, 2013, Ms. J requested a modification review and on December 31, 2013, CSSD notified both parties of the petition for modification.² On March 25, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified Mr. N’s child support to \$250 per month, effective January 1, 2014.³ He appealed on July 28, 2014, asserting CSSD’s determination of his income was incorrect.⁴

B. Material Facts

Mr. N and Ms. J are the parents of T, who is 4 years old. Ms. J has custody of T, but Mr. N is unhappy with the arrangement and is hoping that they can have shared custody in the future.

¹ Exh. 1.
² Exhs. 2-3.
³ Exh. 6.
⁴ Exh. 7.

Mr. N is not employed full-time. He has worked only part-time for the last few years, as a fill-in custodian, cannery worker, temporary VPO for No Name, and as a mail runner between the village airport and post office. He's also helped his father as a deck hand, but he doesn't get paid for that work. Mr. N testified that his back bothers him due to slipping on some rocks while getting out of the boat in August or September of 2013. He has seen a doctor and is taking medications for the ailment, but he is able to work. Mr. N earned \$2,576.36 in 2011, \$2,715.94 in 2012, and \$2,278.52 in 2013.⁵

Mr. N is seeking employment in the construction field, such as laborer or heavy equipment operator, but job opportunities in the Bush are scarce. Information provided by the Alaska Department of Labor and Workplace Development (DOL) shows that Mr. N has earned only about \$2,500 annually, plus some unemployment benefits, during each of the last three years.⁶

Mr. N lives with his girlfriend, who is employed full-time as a teacher. He said he would be living with and supported by his parents if he did not live with her.

III. Discussion

Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁷ 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.⁸ In this case, the notice was issued on December 31, 2013, so a modification would be effective as of January 1, 2014.⁹ In a child support matter, the person who files the appeal has the burden of proving that CSSD's order was incorrect.¹⁰ Mr. N filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order that increased his child support to \$250 per month is incorrect.¹¹

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

⁵ Exh. 8 at pg. 1.

⁶ Exh. 8.

⁷ AS 25.27.190(e).

⁸ 15 AAC 125.321(d).

⁹ Exh. 2.

¹⁰ 15 AAC 05.030(h).

¹¹ 2 AAC 64.290(e).

and Social Security. CSSD estimated his total 2014 income at \$17,020, which includes the 2013 PFD of \$900.¹² To arrive at that income amount, CSSD multiplied the minimum wage in Alaska of \$7.75 per hour times 2,080 hours, the number of hours a full-time employee working 40 hours per week would accumulate on an annual basis.¹³

Alaska law directs CSSD to make a determination of the parent's support obligation based on "the income which will be earned when the support is to be paid."¹⁴ Mr. N earned \$2,278.52 in 2013, which is consistent with his earnings for the last several years. He has not had an income that even comes close to the figure CSSD attributed to him for any year in the data report from the DOL. Moreover, there is no evidence in the record that he is currently working in any job that will provide an annual income figure of \$17,020, which is 7½ times more than his 2013 earnings. Nor is there any evidence that employment providing that much annual income is even available to him in his village. Given Mr. N's work history and location, it is not reasonable to attribute income to him in the amount calculated. His 2013 earnings should be used as the basis for the child support calculation.

Mr. N's estimated 2014 income from all sources totals \$4,674.68, which consists of his 2013 wages of \$2,278.52 and unemployment benefits of \$512.16, plus the 2014 PFD of \$1,884.¹⁵ This total income figure, when inserted into CSSD's online calculator, yields a child support amount of \$75 per month. This figure is correct and should be adopted.

IV. Conclusion

Mr. N met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated March 25, 2014 is incorrect because the record does not support the child support calculation. The child support figure in that order of \$250 per month should be vacated and his modified child support should be set at \$75 per month. This figure is correct and should be adopted. There was no variation under Civil Rule 90.3(c) requested or granted.

V. Child Support Order

- The child support amount in the Modified Administrative Child Support and Medical Support Order dated March 25, 2014 is vacated;

¹² Exh. 6 at pg. 6. The 2014 PFD amount was not known when CSSD's order was issued.

¹³ Exh. 6 at pg. 5.

¹⁴ Civil Rule 90.3, Commentary III.E.

¹⁵ Attachment A.

- Mr. N's child support for T is modified to \$75 per month, effective January 1, 2014, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated March 25, 2014 remain in full force and effect.

DATED this 8th day of October, 2014.

Signed _____
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 27th day of October, 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.]