

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

IN THE MATTER OF:)

E A. J)

) OAH No. 14-1506-CSS

) CSSD No. 001123257

DECISION AND ORDER

I. Introduction

The obligor, E A. J, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on August 4, 2014. That order added E, Jr., to Mr. J's existing order for S, O, and T, and modified his ongoing support obligation for all four children, effective August 1, 2014. The other party to the case is N L. P.

The formal hearing was held on September 25, 2014. Mr. J appeared in person. Ms. P, who was contacted by telephone prior to the hearing, did not want to participate. James Pendergraft, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. J's child support is modified to \$1,380 per month for four children (\$1,265 for three children; \$1,035 for two children; and \$767 for one child), effective August 1, 2014, and ongoing. In addition, E, Jr. received services during July 2014, so Mr. J is obligated to pay additional support for that month in the amount of \$118, which is the increase from a three-child calculation to a four-child calculation.

II. Facts

A. Procedural History

Mr. J's support obligation for S, O, and T was set at \$1,009 per month in April 2011.¹ E, Jr. was born in 2012 and began receiving either public assistance or Medicaid services beginning in July 2014.² On July 2, 2014, CSSD initiated a review in order to add E, Jr. to Mr. J's support order for the older children.³ Mr. J provided financial information, and on July 29, 2014, CSSD issued a Modified Administrative Child Support and Medical Support Order that modified his

¹ Exh. 1.

² Exh. 7 at pg. 7.

³ Exh. 4. Mr. J's paternity of E, Jr. was established by administrative order. See Exh. 3.

child support to \$1,416 per month for four children and added arrears only for E, Jr. in the amount of \$118 for July 2014.⁴

Mr. J appealed on August 29, 2014.⁵ Prior to the hearing, CSSD filed an affidavit of Mr. J's earnings history that was obtained from the Alaska Department of Labor and Workforce Development (DOL).⁶

B. Material Facts

For several years, Mr. J has been employed by an Anchorage grocery store, where he is a department manager. His earnings were \$44,915.49 in 2011; \$48,604.51 in 2012; and \$55,987.96 in 2013.⁷ For 2014, the DOL reported he received \$14,584.08 during the first quarter, which, when extrapolated for a full year, equals \$58,336.32.⁸

During the early part of 2014, Mr. J worked quite a bit of overtime. The store did not have a full complement of workers who could fill in for those out on leave or for illness, so overtime work was available to cover those shifts. As the manager, Mr. J assigned much of that overtime to himself. By midyear, however, other stores were providing additional staff, known as "floaters," who were routinely assigned to Mr. J's store to cover those work shifts. As a result, the opportunity for him to work overtime was significantly reduced. Mr. J also testified that overtime work at his store will continue to be reduced from the higher levels early in the year because the floaters will remain at his store.

Mr. J's reduction in income can be confirmed by analyzing his pay at different time periods in the year. For example, at the end of June 2014, his total gross earnings were \$30,173.05.⁹ Dividing that figure by six months yields average monthly pay of \$5,028.84, which, on an annual basis, would equal \$60,346.09.¹⁰ In contrast, just two months later, at the end of August 2014, Mr. J's gross income was \$37,755.28.¹¹ Dividing that figure by eight months yields average monthly pay of \$4,719.41, which, on an annual basis, would equal only

⁴ Exh. 7 at pg. 7.

⁵ Exh. 8.

⁶ Exh. 9.

⁷ *Id.*

⁸ $\$14,584.08 \times 4 = \$58,336.32.$

⁹ Exh. 5 at pg. 27.

¹⁰ $\$5,028.84 \times 12 = \$60,346.09.$

¹¹ Exh. 10 at pg. 3.

\$56,632.92.¹² Clearly, Mr. J's income has been reduced during 2014 and will remain so during the foreseeable future.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹³ Adding a child to an existing order constitutes a material change in circumstances sufficient to warrant modification of the ongoing support order. A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹⁴ CSSD issued the notice in Mr. J's case on July 2, 2014, so the modification is effective as of August 1, 2014.¹⁵

Civil Rule 90.3(a)(1) provides that a parent's child support amount is to be calculated based on his or her “total income from all sources.” Since Mr. J's final 2014 income is not yet known, it must be estimated from the information available. CSSD calculated Mr. J's modified ongoing child support at \$1,416 per month for four children, based on an annual income figure of \$60,346.10.¹⁶ Based on the analysis of Mr. J's income decline in 2014, the income figure CSSD used overstates his estimated income for the year. The expected income figure that is derived from Mr. J's gross income at the end of the August 2014 – \$56,632.92 – is the most accurate estimate of his income for the year and thus it should be used as the basis of his child support modification. Inserting this figure into a child support calculation yields a support amount of \$1,380 per month for four children (\$1,265 for three children; \$1,035 for two children; and \$767 for one child).¹⁷ These figures are correct and should be adopted.

IV. Conclusion

Mr. J met his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Mr. J's estimated income for 2014 has been determined from his most recent pay information, and his child support is now correctly calculated. There has been no variance under Civil Rule 90.3(c) either requested or granted.

¹² \$4,719.41 x 12 = \$56,632.92.

¹³ AS 25.27.190(e).

¹⁴ 15 AAC 125.321(d).

¹⁵ Exh. 4.

¹⁶ Exh. 7 at pg. 6.

¹⁷ Attachment A. As can be seen on the calculation worksheet, some of the benefit of Mr. J's lower estimated income has been lost in the increase of the PFD from \$900 to \$1,884 annually.

V. Child Support Order

- Mr. J is liable for arrears for E, Jr. in the amount of \$118 for the month of July 2014;
- Mr. J is liable for modified ongoing child support in the amount of \$1,380 per month for four children (\$1,265 for three children; \$1,035 for two children; and \$767 for one child), effective August 1, 2014, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated July 29, 2014 remain in full force and effect.

DATED this 15th 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 3rd day of November, 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.]