

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

In the Matter of:)
)
 B E) OAH No. 14-1698-CSS
) CSSD No. 001171092
_____)

CORRECTED DECISION AND ORDER

I. Introduction

E E, custodial parent of the five E children subject to this order, petitioned for modification of an existing child support order. On August 26, 2014, the Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order which ordered B E, the children’s mother and obligor, to pay \$1,624 in monthly child support.¹ Ms. E appealed the amended order on September 24, 2014.²

A hearing was held on October 23, 2014.³ Mr. E and Ms. E appeared telephonically. Andrew Rawls, Child Support Specialist, represented CSSD, and participated telephonically. The record closed on November 7, 2014, after Mr. E submitted additional documentation.⁴

Based on the evidence and after careful consideration, Ms. E’s child support is modified to \$1,624 per month, in accordance with CSSD’s August 26, 2014, Modified Administrative Child Support and Medical Support Order.

II. Facts

A. Background

B and E E are the parents of Z (DOB 00/00/95), K (DOB 00/00/98), B (DOB 00/00/00), C (DOB 00/00/03), M (DOB 00/00/04), and X (DOB 00/00/07).⁵ Z is over 18 and attending college. He is no longer covered by the child support order. E E is the custodial parent.

On June 18, 2012, the Office of Administrative Hearings issued a decision and order setting Ms. E’s ongoing child support obligation at \$1,340 per month.⁶ On June 28, 2014, Mr. E

¹ Ex. 7.

² Ex.8.

³ There were scheduling difficulties with the hearing. Mr. E had phoned OAH and rescheduled the hearing. Ms. E and CSSD were not aware of the rescheduled time and phoned OAH for the October 23rd hearing. The parties went on record. Once CSSD explained that Mr. E’s income or spending habits were not at issue for the hearing, Mr. E agreed to go forward with the hearing.

⁴ CSSD’s post- hearing submissions; Ex. 13; Ex. 14. (corrected)

⁵ X and M’s birthdates were corrected from the originally issued proposed decision.

filed a petition for modification of existing child support order.⁷ CSSD served a Notice of Petition for Modification of Administrative Child Support Order on the parties.⁸ CSSD received income documentation from Ms. E and her employers.⁹ On August 26, 2014, CSSD issued a Decision on Request for Modification Review and Modified Administrative Child Support and Medical Support Order that ordered Ms. E to pay \$1,624 in monthly child support from August 1, 2014 forward.¹⁰ The order was based on actual income provided by employers. On September 24, 2014, Ms. E filed an appeal.¹¹

Ms. E holds two jobs, works six days a week, and works very long days in order to pay for child support, provide clothing and other items directly to her children, help with Z's college costs, and cover her cost of living expenses.¹² Ms. E testified credibly that she works two jobs in order to fulfill her child support obligation.

After receiving the appeal and speaking with Ms. E, CSSD prepared a child support calculation based only Ms. E's full time employment.¹³ This resulted in a monthly obligation of \$1,374, which is less than a fifteen-percent change from the June 2012 child support obligation order.¹⁴ If this calculation were used, the June 2012 order would remain in effect. Mr. E objected to a calculation based only on Ms. E's full time job.

III. Discussion

Ms. E has the burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.¹⁵ She has not met this burden.

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. Child support orders may be modified upon a showing of "good cause and

6 Ex. 1.

7 Ex. 2; Pre-hearing brief.

8 Ex. 3.

9 Ex. 4 - 6.

10 Ex. 7.

11 Ex. 8.

12 Ex. 8; Ms. E testimony.

13 Ex. 9; AJ Rawls testimony.

14 AJ Rawls testimony. Fifteen percent of \$1,340 is \$201. There is only a \$34 difference between the \$1,340 and \$1,374.

15 AS 25.27.190(e).

material change in circumstances.”¹⁶ A child support calculation that results in a fifteen-percent change or greater to a child support order is considered a material change in circumstances.¹⁷ A parent may obtain a reduction in the amount calculated, but only if he or she shows that “good cause” exists for the reduction. In order to establish good cause in this context, the parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”¹⁸

Ms. E’s income is the only income considered because Mr. E has physical custody of all the children. CSSD’s August 26, 2104, Modified Administrative Child Support and Medical Support Order, based on Ms. E’s total income, resulted in a greater than fifteen-percent change to child support. CSSD issued the August 26, 2014, Modified Administrative Child Support and Medical Support Order because it correctly determined that the material change threshold was met.

At hearing, CSSD stated that it may calculate child support based on a single job if the obligor parent’s second jobs in held only in order to pay his or her child support obligation. It was this belief that led CSSD to recalculate Ms. E’s child support obligation for consideration. However, the exclusion of a second job is only available for obligor’s who are working additional jobs in order to provide for subsequent children.¹⁹ Therefore, a child support calculation based only on Ms. E’s full time job is not supportable under Alaska law.

Ms. E also argued that Mr. E does not use much of the child support payment on the children’s needs.²⁰ She stated that school supplies, clothing, camp costs, etc. are provided by her, her family, or Mr. E’s family.²¹ Mr. E objected to these assertions. Under Alaska law, custodial parents have decision making authority regarding how child support payments are spent.²² Items provided directly to the children by the obligor parent are considered gifts and are not considered in terms of calculating child support.²³ While Ms. E’s objections to Mr. E’s use

16 AS 25.27.190(e).

17 Civil Rule 90.3(h).

18 Civil Rule 90.3(c).

19 Income from a second job, if it is specifically to care for a subsequent family, may be a defense to an upward modification. Civil Rule 90.3, Commentary VI.B.2.

20 Ex. 8.

21 Ex. 8.

22 *SCED v. Campbell*, 931 P.2d 416 (1997).

23 *SCED v. Campbell*, 931 P.2d 416 (1997).

of child support funds may have merit, they do not support a reduction to her child support obligation.

Ms. E established that she works incredibly long hours and a great deal of her incomes goes to support her children. Her living expenses in No Name are quite high. But the record fails to establish that manifest injustice would result if the amended support order were not lowered.

Lastly, Ms. E stated that she provides health insurance for the children, but has not received the applicable child support credit. Mr. E disputed that Ms. E has always provided health insurance coverage for the children. It appears Ms. E may be entitled to a credit for health insurance. She may contact CSSD and provide documentation of health care coverage and cost breakdown in order for CSSD to calculate any credit which may be due.

IV. Conclusion

Based on the evidence, the August 26, 2104, Modified Administrative Child Support Order and Medical Support Order is correct. CSSD's recalculated child support obligation,²⁴ based solely on Ms. E's full-time job is not adopted.

V. Child Support Order

- Ms. E has an ongoing child support obligation of \$1,624 per month, beginning August 1, 2014;
- All other provisions of the November 25, 2013, Administrative Child Support and Medical Support Order remain in effect.

DATED December 15, 2014.²⁵

Signed

Bride Seifert
Administrative Law Judge

²⁴ Ex. 9.

²⁵ Proposed decision issued November 26, 2014. Typographical errors corrected pursuant to 2 AAC 64.350.

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 17th day of December, 2014.

By: Signed
Signature
Jerry Burnett
Name
Deputy Commissioner
Title

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