

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

In the Matter of)	
)	
M K)	OAH No. 14-2401-CSS
_____)	Agency No. 001126852

DECISION AND ORDER

I. Introduction

Mr. K appealed a Modified Administrative Child Support and Medical Support Order that CSSD issued in his case on November 24, 2014. The obligee child is N, 11 years of age. The custodian is B K. O.

The hearing was concluded on February 10, 2015. Both parties participated by telephone, with James Pendergraft, CSSD Child Support Specialist. The hearing was recorded.

Based on the evidence and after careful consideration, Mr. K's child support obligation for N is modified to \$707 per month, effective November 1, 2014.

II. Facts

A. Procedural History

Mr. K's child support obligation for N was set at \$551 per month in August 2014.¹ On October 15, 2014, he requested a modification review.² On October 27, 2014, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.³ CSSD granted the petition, and on November 24, 2014, the division issued a Modified Administrative Child Support and Medical Support Order that increased Mr. K's child support to \$707 per month, effective November 1, 2014.⁴ Mr. K appealed on December 19, 2014.⁵

B. Material Facts

Mr. K has been employed by No Name Business for several years. In 2012, his earnings from the company were \$37,051.08.⁶ In 2013, his earnings had increased to \$43,102.86.⁷ His income from wages continued to increase in 2014, and by the end of the third quarter, his year-to-date wages totaled \$52,424.11.⁸ Of that total, his highest quarterly earnings were received in

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 6.
⁵ Exh. 7.
⁶ Exh. 8.
⁷ *Id.*
⁸ *Id.*

the third quarter of 2014 – \$30,298.61. Mr. K’s base wage is just \$19 per hour, but his income increased significantly in 2014 because he occasionally worked on a Davis Bacon job, which pays much higher hourly wages. The Alaska Department of Labor and Workforce Development (DOL) had not yet reported Mr. K’s wages for the fourth quarter of 2014, but he estimated his total income last year was about \$76,000.

Mr. K was previously married to S, with whom he has three children. They separated in about August 2014, after which time Mr. K moved in with a roommate and began sharing expenses. The divorce was finalized in January 2015. Mr. K has one child named J who is older than N; Mr. K has shared physical custody of J.

III. Discussion

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”⁹ 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. K’s child support has been \$551 per month since February 2004. Thus, a child support calculation of \$633.65 or higher would be sufficient to warrant modification in this case.¹⁰

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.¹¹ In this case, the notice was issued on October 27, 2014, so any modification of Mr. K’s child support obligation for N would be effective as of November 1, 2014.¹²

In a child support matter, the person who files the appeal has the burden of proving that CSSD’s order was incorrect.¹³ Mr. K filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated November 24, 2014 is incorrect.¹⁴

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. The rule also states that a parent is entitled to an additional deduction from

⁹ AS 25.27.190(e).
¹⁰ \$551 x 1.15 = \$633.65.
¹¹ 15 AAC 125.321(d).
¹² See Exh. 3.
¹³ 15 AAC 05.030(h).
¹⁴ 2 AAC 64.290(e).

income for “in-kind child support for children from prior relationships in the primary or shared physical custody of the parent.”¹⁵

Mr. K has a child named J living with him who is older than N. In a prior modification, Mr. K was not given the deduction because his name was not on J’s birth certificate. Apparently during the time after that earlier modification, Mr. K filed a corrected birth certificate, so CSSD included the deduction in its calculation of Mr. K’s child support for this modification.¹⁶ The resulting child support calculation is \$707 per month.¹⁷

Mr. K objects to the increase in his child support obligation from \$551 to \$707 per month. He claimed that his child support should not have increased because he did not receive the prior child deduction in the earlier modification. Following this argument, if he is *now* getting the deduction, his child support should not have increased from the prior figure.

Mr. K is correct that his child support amount should have gone down after the prior child deduction was included in this new calculation. However, that would only be true if his income for the two calculations had remained the same. But that is not the case here – DOL records show that Mr. K’s income has increased significantly since his prior modification. In the four consecutive quarters from the fourth quarter of 2013 through the third quarter of 2014, Mr. K received \$67,018.56.¹⁸ This is about 50% higher than his total 2013 income of \$43,102.86.¹⁹ An increase in child support should be expected under these circumstances.

Mr. K claims that his increased income is the result of working on Davis Bacon jobs that pay much higher than his normal \$19 per hour wage. He said he cannot be expected to continue to earn income at that level, especially since there were no more Davis Bacon jobs coming up in the future. While it may be true that Mr. K will not earn any more Davis Bacon wages, Civil Rule 90.3(a)(1) requires that his child support is to be calculated from his “total income from all sources.” The income history provided by the DOL is the best evidence of his income, and this information should be used to calculate his modified child support obligation for N.

IV. Conclusion

Mr. K did not meet his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated November 24, 2014 is incorrect. His child support obligation for N is correctly calculated at \$707 per month, effective

¹⁵ Civil Rule 90.3(a)(1)(D).

¹⁶ See Exh. 6 at pg. 6. The deduction is in section 2, line i.

¹⁷ *Id.*

¹⁸ Exh. 8 at pg. 1.

¹⁹ *Id.*

November 1, 2014. He is now entitled to a deduction for paying support for J, and this deduction from income has been included in the calculation.

V. Child Support Order

- Mr. K's child support obligation for N is modified to \$707 per month, effective November 1, 2014;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated November 24, 2014, remain in full force and effect.

Dated: May 27, 2015

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 within 30 days after the date of this decision.

DATED this 10th day of June, 2015.

By: *Signed* _____
Signature
Kay L. Howard _____
Name
Administrative Law Judge _____
Title

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