

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

In the Matter of)	
)	
H C)	OAH No. 15-0075-CSS
<hr style="width:45%; margin-left:0"/>)	Agency No. 001177414

DECISION AND ORDER

I. Introduction

H C is appealing a Modified Administrative Child Support and Medical Support Order that CSSD issued in his case on December 17, 2014. The child in this case is Q, who is 5 years of age. The other party is T H.

The hearing was held on February 19, 2015, with record closure occurring that same day. Mr. C and Ms. H participated by telephone. Andrew Rawls, Child Support Specialist, represented CSSD.

Based on the record as a whole and after due deliberation, the Modified Administrative Child Support and Medical Support Order dated December 17, 2014 is affirmed. Mr. C is liable for modified ongoing child support in the amount of \$50 per month, effective December 1, 2014, and ongoing.

II. Facts

Mr. C's child support obligation for Q was previously set at \$279 per month.¹ This amount was determined using the minimum wage and a 40-hour work week.² The record presented in this case does not appear to contain evidence that would support the entirety of the imputed income. Mr. C's last wages appear to be in 2010 when he had wages reported to the Alaska Department of Labor in the amount of \$1,890.³

Regardless, Mr. C's child support remained at \$279 per month until 2014. At some point in 2014 CSSD was informed that Mr. C's income had changed due to his incarceration and it initiated this modification review.⁴

¹ Exh. 2.
² Exh. 2 at 4.
³ Exh. 2 at 4.
⁴ Exh. 3.

On November 12, 2014, CSSD issued a notice of request for modification,⁵ and subsequently issued the December 17, 2014, Modified Administrative Child Support and Medical Support Order. That order set Mr. C's modified ongoing child support at \$50 per month, based on his long-term incarceration.⁶ Mr. C appealed.⁷

He originally appealed arguing that he was challenging the paternity of Q and that he should not be charged support for another child, K. At the hearing it was explained that K was not a part of this proceeding. It was also explained that because more than three years had passed since Mr. C knew or should have known of his paternity of Q, any challenge would need to be filed in a judicial process, not administrative. With these explanations Mr. C was satisfied and withdrew his challenge to the \$50 order on these two grounds. He was not, however, willing to withdraw his appeal, because Mr. C does not believe his support should be lower. He believes it should remain as previously calculated because he intends to get a job upon release.

Mr. C is incarcerated on a long-term basis commencing October 2013 and is not scheduled to be released until late 2015. Mr. C is in arrears, although the amount was not established at the time of hearing.⁸ He does not have any income-producing assets and he does not have a job waiting for him upon his release.⁹

III. Discussion

The material facts of this case are not in dispute. Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁰ If the newly calculated child support amount is more than 15% higher or lower than the previous support amount, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified.

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." If the parent is incarcerated and does not have any income, the child support is set at \$50 per month. This is the minimum amount allowed under Alaska law, and it may not be reduced below that figure.¹¹ The \$50 per month

⁵ Exh. 3.

⁶ Exh. 5.

⁷ Exh. 6.

⁸ Unchallenged representation of CSSD.

⁹ C Testimony; Representation of CSSD.

¹⁰ AS 25.27.190(e).

¹¹ Civil Rule 90.3(c)(1)(B).

minimum order has been upheld by the Alaska Supreme Court, which stated that a non-custodial parent may lack the present ability to pay an ongoing child support amount, and may even be indigent due to incarceration, but those facts will not excuse the child support obligation.¹²

Mr. C argues, in essence, that Civil Rule 90.3 only dictates what the *minimum* child support amount should be for an incarcerated individual and does not actually require that the support amount be set as low as \$50. Even though Mr. C is incarcerated and does not have the ability to seek work outside of the prison, he claims that his child support should not be lowered.

Mr. C's objection to the child support amount of \$50 per month is to be commended, but his request to have his monthly obligation based on the prior order is contrary to the rules governing child support. Civil Rule 90.3(a)(1) clearly states that an obligor parent's child support should be calculated based on his or her ability to provide as a result of "total income from all sources."¹³ The commentary to the Rule adds that the income figure to be used is that "which will be earned when the support is to be paid."¹⁴ Mr. C is incarcerated and is not working, nor does he have any possibility of working. Due to his lack of income, a child support calculation in the minimum amount of \$50 per month is correct. When he is released from prison, Mr. C will be free to voluntarily increase his child support payments if he is able.

IV. Conclusion

Mr. C did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. Mr. C is incarcerated and does not have any earned income. As a result, his child support should be set at \$50 per month and the modified order should be affirmed.

V. Child Support Order

The Modified Administrative Child Support and Medical Support Order dated December 17, 2014 is affirmed – Mr. C is liable for child support for Q in the amount of \$50 per month.

Dated: February 19, 2015.

Signed _____

Rebecca L. Pauli
Administrative Law Judge

¹² *Douglas v. State*, 880 P.2d 113 (Alaska 1994).

¹³ See Civil Rule 90.3, Commentary I.B .

¹⁴ Civil Rule 90.3, Commentary I.E.

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 13th day of March, 2015.

By: Signed
Signature
Rebecca L. Pauli
Name
Administrative Law Judge
Title

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