

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

In the Matter of )  
 )  
T J. L ) OAH No. 15-0112-CSS  
 ) Agency No. 001199278  
\_\_\_\_\_ )

**DECISION AND ORDER**

**I. Introduction**

The obligor, T J. L, appealed a Modified Administrative Child Support and Medical Support Order dated January 12, 2015 that the Child Support Services Division (CSSD) issued in his case. The child is B, who is nearly 2 years of age. The custodian of record is N N. X.

The hearing was held on March 5, 2015. Both parties appeared by telephone, along with CSSD’s Child Support Specialist, James Pendergraft. The hearing was recorded.

Based on the record as a whole and after careful consideration, CSSD’s Modified Administrative Child Support and Medical Support Order is affirmed. Mr. L’s child support is modified to \$379 per month for one child, effective January 1, 2015.

**II. Facts**

*A. Procedural History*

Mr. L’s child support obligation for B was set at \$629 per month, effective as of April 2014.<sup>1</sup> Ms. X requested a modification review on November 25, 2014.<sup>2</sup> On December 12, 2014, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.<sup>3</sup> Mr. L provided financial information.<sup>4</sup> On January 12, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order that set his child support at \$379 per month, effective January 1, 2015.<sup>5</sup> He appealed on February 4, 2015.<sup>6</sup> Prior to the hearing, CSSD submitted Mr. L’s earnings history that was provided by the Alaska Department of Labor and Workforce Development.<sup>7</sup>

*B. Material Facts*<sup>8</sup>

The earnings history CSSD provided indicates that Mr. L has had two primary employers during the last few years. He worked for a company called Facility Z through the end of 2013,

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<sup>1</sup> Exh. 1.  
<sup>2</sup> Exh. 2.  
<sup>3</sup> Exh. 3.  
<sup>4</sup> Exh. 5.  
<sup>5</sup> Exh. 6.  
<sup>6</sup> Exh. 7.  
<sup>7</sup> Exh. 8.  
<sup>8</sup> The facts are taken from Mr. L’s testimony, unless otherwise stated.

after which he began working for Facility Y, where he was employed until the last quarter of 2014.<sup>9</sup> In 2012, Mr. L earned \$15,121.20; in 2013, his income increased to \$38,283.42.<sup>10</sup>

Mr. L's last day of work at Facility Y was August 16, 2014. Two days later, he started school at the Facility X in No Name A, Alaska, where he is taking a course in internet technology to learn about computer networks and servers. Mr. L is living in the dormitory; his tuition and living expenses are being paid through a scholarship and student loans. His other expenses include a truck payment and cell phone.

Mr. L explained that he resigned from his job to go to Facility X because he wanted to "better his future." He stated he would be graduating in June 2015 and wanted to stay in the No Name B area, but that he would go to Anchorage if necessary. Facility X has employment assistance services that Mr. L said he would be using after graduation.

Ms. X is the single mother of two girls. She testified that B has medical issues but did not elaborate on the child's specific problems. Ms. X also testified that she did not know the prior order for \$629 per month was in place when she submitted an application for services and requested the modification. She said she had spoken with someone at CSSD who hadn't worked there for very long and had told her that since Mr. L was in school his payments would be reduced significantly.

### **III. Discussion**

Child support orders may be modified upon a showing of "good cause and material change in circumstances."<sup>11</sup> 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. L's child support obligation was set at \$629 in June 2014. Thus, a child support calculation at least \$94.35 higher or lower than \$629 per month would be sufficient to modify Mr. L's child support amount.<sup>12</sup>

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.<sup>13</sup> In this case, the notice was issued on December 12, 2014, so the modification is effective January 1, 2015.<sup>14</sup>

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<sup>9</sup> Exh. 8.

<sup>10</sup> *Id.*

<sup>11</sup> AS 25.27.190(e).

<sup>12</sup>  $\$629 \times 15\% = \$94.35$ .

<sup>13</sup> 15 AAC 125.321(d).

<sup>14</sup> Exh. 3.

In a child support matter, the person who files the appeal has the burden of proving that the division's order was issued in error.<sup>15</sup> Mr. L filed the appeal, so he must prove by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.<sup>16</sup>

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. For the modification, CSSD determined that Mr. L was unemployed and receiving unemployment benefits. Because he was not working, CSSD calculated a child support amount based on his prior wage of \$12 per hour, times 2,080 hours, the number of hours a full-time employee typically works in one year. The result was \$379 per month, which CSSD used in the modification order.<sup>17</sup>

Mr. L objects to the use of his prior wage in the modification calculation because he had not worked since August 2014 and was attending Facility X in No Name A. For her part, Ms. X appeared to regret requesting the modification, preferring instead to have left the prior order of \$629 in place.

CSSD stands by its calculation of \$379 per month. Mr. L did not respond to the division's notice of the petition for modification, so it appears that all CSSD knew at the time of the modification was that Mr. L was unemployed and receiving unemployment benefits (UIB). Without more information as to the reason for his circumstances at the time, CSSD modified his child support based on his last recorded hourly wage. This is one of the methods the division is allowed to use in calculating ongoing child support.<sup>18</sup>

Mr. L's claim that his child support should be lower because he is unemployed and currently attending a trade school is without merit. Mr. L's attendance at Facility X is a temporary situation. The Alaska Supreme Court has stated that unemployment is generally considered to be a temporary circumstance that should not result in the reduction of an obligor parent's child support.<sup>19</sup> Prior decisions from the Office of Administrative Hearings follow this approach,<sup>20</sup> and there is no reason not to follow this line of cases in Mr. L's case. His child support should remain at the \$379 amount. He may lack the ability to pay the total child support

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<sup>15</sup> 15 AAC 05.030(h).

<sup>16</sup> 2 AAC 64.290(e).

<sup>17</sup> See Exh. 6.

<sup>18</sup> See 15 AAC 125.050(c)(4).

<sup>19</sup> *Patch v. Patch*, 760 P.2d 526 (Alaska 1988).

<sup>20</sup> See *In The Matter Of M.J.V.*, OAH No. 09-0181-CSS (Comm'r of Revenue June 2009).

amount every month and thus he may incur additional arrears, but he should be able to catch up after returning to work.

**IV. Conclusion**

Mr. L did not meet his burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated January 12, 2015 is incorrect. Mr. L's unemployment and attendance at a trade school is a temporary circumstance that should not disturb CSSD's calculation of his modified child support at \$379 per month. This figure is correct and should be adopted as of January 1, 2015. No variance under Civil Rule 90.3(c) was requested or granted.

**V. Child Support Order**

- Mr. L is liable for modified child support for B in the amount of \$379 per month, effective January 1, 2015;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated January 12, 2015 remain in full force and effect.

Dated: May 29, 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 12th 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.]