

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

In the Matter of)	
)	
K S. K)	OAH No. 15-0840-CSS
_____)	Agency No. 001150636

DECISION AND ORDER

I. Introduction

K K and H N are the parents of six-year-old O and ten-year-old G. The children live with Mr. N, and Ms. K pays child support under an Order issued by the Child Support Services Division (CSSD). In this proceeding, Ms. K appeals CSSD’s denial of her request to modify the September 2013 Amended Administrative Child and Medical Support Order under which she pays child support. This decision reverses the denial of modification review, and reduces Ms. K’s monthly child support payment for two children to \$195.00 per month, effective May 1, 2015.

II. Facts

K K is the mother of six-year-old O and ten-year-old G. The children live with their father, H N. On September 17, 2013, CSSD issued an Amended Administrative Child and Medical Support Order setting Ms. K’s monthly child support obligation for the two children at \$358.00 per month.¹

On March 27, 2015, Ms. K requested a modification review.² In April 2015, CSSD notified Ms. K and Mr. N that a petition to modify had been filed, and requested both parties to provide financial information.³ Ms. K did not provide the requested financial information. However, her employer completed a “Response to Inquiry” form indicating that Ms. K held an “on-call” position earning \$15 per hour.⁴ Because Ms. K had not provided the requested financial information, and because the limited information received

¹ Ex. 1.
² Ex. 2.
³ Ex. 3.
⁴ Ex. 4.

from her employer did not appear to support modification, CSSD denied the request for modification.⁵

Ms. K filed an appeal, arguing that her monthly payments were too high.⁶ Ms. K submitted recent paystubs and her 2014 tax return with her appeal.⁷ Based on the documents Ms. K submitted, as well as on information obtained from the Alaska Department of Labor and Workforce Development database,⁸ CSSD prepared a proposed revised child support calculation with a revised monthly support payment for two children of \$162.00.⁹ This proposed revised calculation was distributed to both parents two weeks before the hearing.¹⁰

A hearing was held on July 29, 2015. The Division was represented by Joseph West. Ms. K participated telephonically and testified on her own behalf. Mr. N was not able to be reached at either of his phone numbers of record, and so did not participate.

Ms. K, age 27, has lived in the No Name Area her whole life. She currently lives in No Name Village at her aunt's house, paying rent to her aunt when she is able to do so. After several years of apparently voluntary unemployment, Ms. K has recently obtained two part-time on-call positions. In January or February of 2015, she was hired as an on-call administrative assistant for the Native Village of No Name 2. The position pays \$15 per hour, but is limited to 16-24 hours per month.

In June 2015, Ms. K began a second position as an on-call seasonal laborer for No Name 3 Corporation. This position also pays \$15 per hour. This position has been busy for the summer months, but Ms. K does not expect the job to extend past the summer months due to the nature of the work.

Ms. K testified that as of the end of July, her annual income had been between \$2,000 and \$3,000 from No Name 3,¹¹ and \$1,332 to year through No Name 2. She is uncertain about what the rest of the year will look like. She does not know whether she will

⁵ CSSD Pre-Hearing Brief; Ex. 5. According to CSSD's presentation at the hearing, Exhibit 5, which is missing some text, is not an accurate copy of the document that was sent to Ms. K.. Exhibit 5 is admitted for the limited purpose of establishing the date on which the document was sent.

⁶ Ex. 6. Although Ms. K's request for appeal references a monthly payment of \$629.72, her support obligation under the September 2013 Order is for \$358 per month. See Ex. 1, pp. 1, 6.

⁷ Ex. 6, pp. 2-6.

⁸ Ex. 8.

⁹ Ex. 9.

¹⁰ See CSSD Pre-Hearing Brief, p. 2.

¹¹ Hrg. 25:30.

continue to receive steady work through the No Name 2 position, since her heavy summer work schedule at No Name 3 has led her to turn down several possible assignments at that position. However, Ms. K has also been applying to other jobs,¹² and may be close to securing another part time on-call position with another No Name 3 subsidiary.¹³

At the close of the hearing, the record was held open for Ms. K to submit a recently-received letter about a potential job, and her most recent paystubs, to CSSD for CSSD to research whether Ms. K's place of residence qualifies as a "distressed community," and for CSSD to prepare a new revised support calculation based on the complete record. On August 4, 2015, CSSD submitted a revised proposed calculation proposing a support amount for two children of \$229.00 per month.¹⁴ The record closed on August 10, 2015 without Ms. K submitting any materials or any response to CSSD's revised proposed calculation.¹⁵

III. Discussion

Every parent is obligated both by statute and at common law to support his or her children.¹⁶ Child support obligations are determined under Alaska Civil Rule 90.3. "The primary purpose of Rule 90.3 is to ensure that child support orders are adequate to meet the needs of children, subject to the ability of parents to pay."¹⁷

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹⁸ 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. Here, it is undisputed that the threshold for modification is met. The question for decision, then, is the appropriate amount of the modified support order.

¹² Neither No Name Area nor No Name Village are considered "economically distressed communities" by the Alaska Department of Labor and Workforce Development. See 8/4/15 CSSD Submission to Record. Ms. K acknowledged that she may have to relocate to a larger community to find work, but expressed uncertainty as to how she would accomplish this. CSSD did not argue that Ms. K is voluntarily or unreasonably underemployed at this time, and that issue is not addressed here.

¹³ Following the hearing, Ms. K was supposed to provide CSSD with the letter she recently received about this position to provide clarity about the status of that job, but did failed to do so. See 8/10/15 CSSD Submission to Record. The current uncertainty about that position precludes including it in the calculations here at this time.

¹⁴ The documents attached to CSSD's August 4, 2015 Submission to Record are accepted as Exhibit 10.

¹⁵ See 8/10/15 CSSD Submission to Record. Mr. N, likewise, did not submit any response to CSSD's revised proposed calculation.

¹⁶ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹⁷ Civil Rule 90.3, Commentary I.B.

¹⁸ AS 25.27.190(e).

Child support under Rule 90.3 is calculated based on the adjusted annual income of the non-custodial parent.¹⁹ 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. Determining an obligor's annual income for purposes of calculating ongoing child support is "necessarily ... speculative because the relevant income figure is expected future income."²⁰

Prior to the hearing, CSSD submitted a proposed calculation using an expected annual wage income of \$4,033.80.²¹ Following the hearing, CSSD submitted a revised proposed calculation using an expected annual wage figure of \$8,568.00.²² CSSD's submission to record indicates that this calculation is "based on Ms. K K's testimony that she has made roughly \$5,000 so far through July 2015." CSSD then extrapolated an annual gross wage based on those earnings, added the PFD and Ms. K's Native Corporation dividends, and, after allowable deductions, calculated a Rule 90.3 support payment for two children of \$229.00 per month.²³

However, upon a review of the hearing recording, Ms. K did not testify to having earned roughly \$5,000 through July 2015. Rather, Ms. K's testimony was that she had made between \$2,000 and \$3,000 thus far from No Name 3, and another \$1,332 from No Name 2. Thus, Ms. K's total income through July 2015, according to her testimony, was between \$3,332 and \$4,332.²⁴

Given Ms. K's testimony that she worked full time in the No Name 3 job for the month of July, it is more likely than not that her income for No Name 3 through July 2015 was on the higher end of the range estimated by Ms. K. Applying CSSD's proposed methodology to Ms. K's income of roughly \$4,000 through July 2015 yields an average monthly income figure of \$571.00 per month. When that amount is multiplied by the number of months remaining in the year as of the time of Ms. K's testimony (five), it yields

¹⁹ Civil Rule 90.3(a).

²⁰ See Civil Rule 90.3, Commentary III.E.

²¹ Ex. 9, p. 1. This figure was based on Ms. K's paystubs provided with her appeal, as well as the Permanent Fund Dividend, her No Name 3 share dividends, and the income listed on her 2014 tax return. See CSSD Pre-Hearing Brief, p. 2.

²² Ex. 10.

²³ Ex. 10.

²⁴ Although Ms. K also testified the \$4,033.80 income amount used CSSD's July 17, 2015 proposed calculation was "probably the very most" she could reasonably expect to earn this year, her other testimony, as described herein, refutes that projection. See Hrg. 37:00.

an annual wage income of \$6,885. When this amount and the annual dividends from Ms. K's 110 No Name 3 shares are inserted into the Division's online child support calculator,²⁵ the resulting monthly child support amount is \$195 for two children. This is the correct amount of child support under the facts of this case.

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.²⁶ In this case, the notice was issued on April 7, 2015. Accordingly, the modification of Ms. K's child support obligation is effective as of May 1, 2015.²⁷

IV. Conclusion

Ms. K met her burden of showing a sufficient change in circumstances to warrant a modification review. Based on the evidence in the record, Ms. K's monthly child support obligation for two children should be set at \$195.00.

V. Child Support Order

1. K S. K is liable for child support in the amount of \$195.00 per month for two children effective May 1, 2015 and ongoing.
2. All other terms of the Amended Administrative Child Support and Medical Support Order dated September 17, 2013 remain in full force and effect.

Dated: August 11, 2015

Signed

Cheryl Mandala
Administrative Law Judge

²⁵ <https://webapp.state.ak.us/cssd/guidelinecalc/form>.

²⁶ 15 AAC 125.321(d).

²⁷ See Ex. 3.

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 26th day of August, 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.]