

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

In the Matter of	)	
	)	
K N. E	)	OAH No. 15-1191-CSS
_____	)	Agency No. 001198871

**CORRECTED DECISION AND ORDER *Nunc Pro Tunc*<sup>1</sup>**

**I. Introduction**

The Child Support Services Division issued a Modified Administrative Child Support and Medical Support Order, decreasing K E’s monthly child support obligation for his two children from \$1,766 per month to \$1,195 per month. The custodian of record, A A, appealed. Based on the evidence in the record, this decision concludes that the Modification Order is incorrect and, further, that the Petition to Modify was granted in error. Accordingly, Mr. E’s support obligation for two children remains \$1,766 per month.

**II. Facts**

A A and K E are the parents of three-year-old twins, U and C. On June 23, 2014, the Child Support Services Division (CSSD) issued an Administrative Child Support and Medical Support Order setting Mr. E’s monthly child support obligation for the children at \$1,766 per month.<sup>2</sup>

On May 7, 2015, Mr. E requested that CSSD modify his monthly child support obligation. On May 13, 2015, CSSD notified both parents that a petition to modify had been filed. Mr. E provided CSSD with two child support guidelines affidavits, a 2014 W-2, and fifteen paystubs from February through May 2015.<sup>3</sup>

On July 29, 2015, CSSD issued a Modified Administrative Child Support and Medical Support Order, decreasing Mr. E’s monthly child support obligation from \$1,766 per month to \$1,195 per month.<sup>4</sup> Ms. A timely appealed, and the Department of Revenue referred the matter to the Office of Administrative Hearings (OAH).

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<sup>1</sup> Pursuant to 2 AAC 64.350(b), this Decision has been corrected by the final decisionmaker to correct a typographical error, and it replaces the original Decision in its entirety. The amount of the monthly support obligation in the June 2014 Order, and now owing, is corrected throughout to read \$1,766; mathematically associated corrections are likewise made to explanatory calculations at footnotes 12 and 14.

<sup>2</sup> Ex. 1.

<sup>3</sup> Ex. 3.

<sup>4</sup> Ex. 4.

On September 4, 2015, OAH sent all parties a Notice of Hearing via certified mail to each party's addresses of record. Pursuant to that Notice, the hearing in this matter was convened on September 21, 2015. Ms. A appeared in person. CSSD was represented by Child Support Specialist Joseph West, who also appeared in person. Mr. E did not appear at the hearing, did not call in to the hearing to participate telephonically, and did not answer his telephone when called at the start of the hearing. Because notice had been properly provided, the hearing proceeded in his absence.

At the start of the hearing, CSSD conceded that the July 29, 2015 Modification Order had been based on an erroneous calculation. The Modification Order indicated that the modified support amount was based on Mr. E's year-to-date wages as reflected on "the most recent paystub (pay date 5/29/15)."<sup>5</sup> The Order further stated that this amount was "divided by 25 weeks and then multiplied by 52 annual weeks" to determine an income amount.<sup>6</sup>

As a threshold matter, however, the paystubs at issue did not reflect "25 weeks" of income.<sup>7</sup> Nor did the support amount set forth in the Modification Order otherwise appear consistent with application of the Rule 90.3 formula to the income reflected in the paystubs Mr. E had submitted.

Accordingly, prior to the hearing, CSSD had submitted to OAH a "new calculation for consideration" based on Mr. E's employer-reported earnings to date.<sup>8</sup> Mr. E's employer-reported wage information as reflected on the Department of Labor and Workforce Development database was \$98,164.28 in 2013, \$105,212.80 in 2014, and \$49,127.77 for the first two quarters of 2015.<sup>9</sup>

CSSD's revised calculation – based on an annual income derived from doubling Mr. E's actual income for the first two quarters of 2015 – produces a revised monthly support obligation of \$1,667.<sup>10</sup> In its case presentation, CSSD explained that the revised calculation at Exhibit 6 correctly calculates Mr. E's monthly support obligation based on his 2015 income to date. CSSD further indicated that, because the monthly support amount

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<sup>5</sup> Ex. 4, p. 5.

<sup>6</sup> Ex. 4, p. 5.

<sup>7</sup> There are only twenty-one weeks between January 1 and May 29.

<sup>8</sup> Ex. 6; CSSD's Pre-Hearing Brief, p. 1.

<sup>9</sup> Ex. 9. An incorrect version of this document, filed as Exhibit 7, was replaced by CSSD Exhibit 9.

<sup>10</sup> Ex. 6 and CSSD case presentation.

calculated in Exhibit 6 was only six percent lower than the monthly support in the June 2014 order, CSSD did not believe that modification should have been granted.

Based on the position taken by CSSD, Ms. A did not testify. The record closed and the matter was taken under advisement. This Decision and Order followed.

### **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. E’s child support has been \$1,766 per month since June 2014. Under Rule 90.3(h), a monthly child support obligation less than \$1,501 would be sufficient to warrant modification in this case.<sup>12</sup>

In a child support matter, the person who files the appeal has the burden of proving that CSSD’s order was incorrect.<sup>13</sup> Having filed the appeal, Ms. A has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order dated July 29, 2015, is incorrect.

Ms. A met her burden of showing that the July 29, 2015 Modification Order was incorrect. 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. As CSSD conceded, the calculations described in the Modification Order are not consistent with the evidence of Mr. E’s actual income. CSSD’s revised calculation, on the other hand, is based on Mr. E’s actual employer-reported income for 2015, and is sound.

Further, that calculation does not support a finding of “material change in circumstances” sufficient to justify modification of the June 2014 Administrative Child Support and Medical Support Order. Based on Mr. E’s 2015 employer-reported income to date, a monthly support calculation for two children is \$1,667. This amount is just 5.6 % lower than the support amount established in the June 2014 Order.<sup>14</sup> As CSSD conceded at

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

<sup>12</sup>  $\$1,766 \times .85 = \$1,501.10$ .

<sup>13</sup> 15 AAC 05.030(h).

<sup>14</sup> Compare Ex. 1, p. 1 and Ex. 6, p. 1.

the hearing, this small change is insufficient to warrant a modification of the June 2014 Order.

#### **IV. Conclusion**

Ms. A met her burden of showing that CSSD's Modified Administrative Child Support and Medical Support Order dated July 29, 2015 is incorrect. Based on Mr. E's actual income, the modification order should be vacated and Mr. E's child support should remain at \$1,766 per month.

#### **V. Child Support Order**

1. The Modified Administrative Child Support and Medical Support Order dated July 29, 2015 is vacated.
2. K N. E remains liable for child support in the amount of \$1,766 for per month two children.
3. All other terms of the Administrative Child Support and Medical Support Order dated June 24, 2014 remain in full force and effect.

DATED the 9<sup>th</sup> day of October, 2015, *nunc pro tunc*, the 23rd day of September, 2015.

*Signed*

\_\_\_\_\_  
Cheryl Mandala

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 7th day of October, 2015.

By:

*Signed*

\_\_\_\_\_  
Signature

Cheryl Mandala

\_\_\_\_\_  
Name

Administrative Law Judge

\_\_\_\_\_  
Title

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