

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

In the Matter of:)	
)	OAH No. 16-0314-CSS
F D. P)	CSSD No. 001199436
_____)	

DECISION AND ORDER

I. Introduction

Non-custodial parent F D. P appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on March 9, 2016. The modified order added a second child to Mr. P’s case, set arrears for that child, and modified Mr. P’s ongoing support obligation for two children, effective March 1, 2016.

Based on the evidence and after careful consideration, CSSD’s Modified Administrative Child Support and Medical Support Order is affirmed, with one clarification. The order properly set Mr. P’s ongoing support obligation for two children at \$50 per month, effective March 1, 2016. His prior monthly obligation of \$215 remained effective until that date. The clarification is that arrears for the additional child are set at \$10 per month, but only for the months of November and December 2015.

II. Facts

Mr. P and L C are the parents of two children: X and Y, who live with Ms. C. In 2014, Mr. P’s ongoing monthly child support obligation for X was established at \$215, effective November 1, 2014.¹ Mr. P was incarcerated on April 10, 2015, which limited his ability to earn income and to pay child support regularly.²

Sometime after Y’s birth in late September 2015, CSSD received information from the Department of Public Assistance that cash public assistance was being paid on her behalf. CSSD initiated a modification review to add Y to Mr. P’s support order. On February 8, 2016, it served the parties with a “Notice of Adding a Child to a Support Order and Petition for Modification Review.”³ On March 9, 2016, it issued a decision on the modification review and a Modified Administrative Child Support and Medical Support Order.⁴

¹ Ex. 2.
² Ex. 6; Ex. 7.
³ Ex. 3.
⁴ Ex. 4.

The Modified Administrative Support Order added Y and set arrears for her support dating back to November 1, 2015; it also modified Mr. P's ongoing child support for two children to \$50 per month, effective March 1, 2016. CSSD calculated the arrears for Y at \$10 per month for the months of November and December 2015.⁵ The \$10 arrears charges were due to Mr. P's wage income in 2015, before he was remanded to jail, which would result in a \$10 differential between the support owed for two children and the support owed for only one child in those months.⁶ No arrears were due for the months of January and February 2016 because Mr. P's support obligation based on actual income would have been the same for one or two children.⁷

Mr. P appealed. He does not contest the addition of Y to his support order, and paternity is not in dispute. Mr. P does not disagree with the ongoing \$50 monthly support award. He asserts that the effective date of the modification should be May 1, 2015, since he was incarcerated in mid-April and unable to continue earning income at that time.

The hearing was held on April 25, 2016. Mr. P and custodial parent L C appeared by telephone. Brandi Estes, Child Support Specialist, represented CSSD and also appeared telephonically. The hearing was recorded.

III. Discussion

As the person who filed the appeal in this case, Mr. P has the burden of proving by a preponderance of the evidence that the agency's Modified Administrative Child Support and Medical Support Order dated March 9, 2016 is incorrect.⁸

A parent is obligated both by statute and at common law to support his or her children.⁹ Civil Rule 90.3(a)(1) provides that an obligor's child support is to be calculated based on his or her "total income from all sources" minus mandatory deductions such as taxes and Social Security.¹⁰ In 2014, the Civil Rule 90.3 calculation for Mr. P's income resulted in an ongoing support of \$215 per month for X.

When circumstances change, a party to a child support order may request a modification review, and an order may be modified upon a showing of "good cause and

⁵ Ex. 4, pp. 8, 10.

⁶ See 15 AAC 125.340(e)(1).

⁷ Ex. 4, p. 9. See also 15 AAC 125.340(e)(2)(A).

⁸ 15 AAC 05.030(h).

⁹ *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987); AS 25.20.030.

¹⁰ Civil Rule 90.3(a); see also *Kowalski v. Kowalski*, 806 P.2d 1368, 1370 (Alaska 1991).

material change in circumstances.”¹¹ If the newly calculated child support amount is at least 15% higher or lower than the previous order, Civil Rule 90.3(h) assumes “material change in circumstances” exists and the order may be modified. The minimum child support award is \$50 per month.¹² The effective date of a modification is the first of the month after CSSD issues a Notice of Petition for modification of an administrative support order.¹³ This places the burden on parents to request a modification review when there are significant changes to the non-custodial parent’s income.

Department of Revenue regulations also authorize CSSD to initiate a review of a child support order in particular circumstances. One of those circumstances exists here, because CSSD had reason to believe the parties had an additional child who was not covered by the existing support order.¹⁴ The agency therefore initiated a review by sending notice of the petition for modification by first class mail to each parent.¹⁵ The notice of petition for modification alerts the parties that a review of the order has been requested, and the support order may increase or decrease, but only prospectively from the date of the notice.

The review in this case involves two closely-related but separate events: (1) the establishment of a support order for Y, including any arrears for the period before March 1, 2016,¹⁶ and (2) the modification of ongoing support, so that Mr. P’s support for March 1, 2016 and forward is calculated based on two children. On the first issue, Mr. P agreed that Y is properly added to his case, and he does not dispute the \$10 arrears that were calculated for each of the months of November and December 2015. However, there is an ambiguity in the Modified Order pertaining to the addition of Y that should be clarified. As written, the “Modification as a result of adding a child” section of the Modified Order could be mistakenly read to order arrears of \$20 *per month* for Y, from November 1, 2015 to February 29, 2016.¹⁷ The clarification is that the \$20 reference is to the *total* arrears calculation over that four-month period; that is, \$10 for each of the months of November and December 2015 only.¹⁸

¹¹ AS 25.27.190(e).

¹² Civil Rule 90.3(c)(3).

¹³ 15 AAC 125.321(d).

¹⁴ 15 AAC 125.316(b)(2)(D).

¹⁵ 15 AAC 125.316(c).

¹⁶ See 15 AAC 125.105(a).

¹⁷ See Ex. 4, pp. 3-4.

¹⁸ See Ex. 4, p. 10 (Summary of Support Obligation).

Regarding the second issue in this case, the modification of ongoing child support to include two children, Mr. P does not dispute the determination that his obligation should be reduced to \$50 per month due to his incarceration. He only disputes the effective date of that reduction.

The parties agree that Mr. P was incarcerated on April 10, 2015, and this would create “good cause and material change in circumstances” justifying a modification if he had requested one. It is unfortunate that he did not do so, because a modification is not effective until the first day of the month after the parties are served with the notice that a modification has been requested.¹⁹ Retroactive modifications are not permitted.²⁰

Since retroactive modification is not permitted, the modification of Mr. P’s ongoing support obligation for two children can only be effective as of March 1, 2016, the month after CSSD sent out notice of the review in this case. This means that Mr. P’s \$215 monthly obligation remained in effect for every month in 2015, as well as for January and February 2016. For the months of November and December 2015, he is expected to pay an additional \$10 in arrears for Y.²¹ There was some confusion on this point at the April 25, 2016 hearing, where it was suggested that the arrears for Y may have effectively modified Mr. P’s total support obligation to \$60 per month for November and December 2015, and \$50 for January and February 2016. Such a result would involve an impermissible retroactive modification, however.

There is no provision in Alaska law that would allow the effective date of the modification in this case to be moved back to May 1, 2015. That effective date might have been possible if either Mr. P or Ms. C had requested a modification review at the time of Mr. P’s incarceration. Since that is not the case, there is no relief available to Mr. P through this administrative proceeding. The ongoing support obligation for two children is modified to \$50 per month, effective March 1, 2016.

IV. Conclusion

Child support obligations cannot be modified retroactively. Mr. P 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. Pursuant to Civil Rule 90.3(a), his modified ongoing support obligation is properly set at \$50 per month for two children, effective

¹⁹ 15 AAC 125.321(d).
²⁰ Civil Rule 90.3(h)(2).
²¹ Ex. 4, pp. 3-10.

March 1, 2016 and ongoing. In addition, arrears for Y were correctly set at \$10 per month for the months of November and December 2015. No arrears are due for January or February 2016.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order issued on March 9, 2016 is upheld, with the clarification that arrears for Y are \$10 per month for the months of November and December 2015, or a total of \$20 for the period November 2015 through February 2016.

DATED this 2nd day of May, 2016.

Signed

Kathryn A. Swiderski
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 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of May, 2016.

By: Signed

Signature
Kathryn A. Swiderski

Name
Administrative Law Judge

Title

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