

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

In the Matter of)	
)	
L E. J)	OAH No. 17-0048-CSS
_____)	Agency No. 001151522

DECISION AND ORDER

I. Introduction

B L appeals a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in L J’s case on December 12, 2016. The modification decreased Mr. J’s support obligation for his son Z from \$937 to \$50 per month, due to Mr. J’s long-term incarceration.

Based on the evidence in the record, CSSD correctly adjusted Mr. J’s child support amount to \$50 per month, effective December 1, 2016. The modified child support order is affirmed.

II. Facts

Mr. J and custodial parent B L are the parents of Z, age 9. Mr. J has three other children from a prior relationship, who are all older than Z.

Mr. J is currently incarcerated and unable to work. He expects to be released in August 2017, though he may be released sooner than that if his request for ankle monitoring is approved.

In 2009, CSSD set Mr. J’s child support obligation for Z at \$937 per month.¹ In late August 2016, CSSD received notice of Mr. J’s long-term incarceration.² It then initiated a modification review. On November 8, 2016, it sent both parties notice of the review, and it requested income information.³ CSSD did not receive responsive information from either party.⁴

Based on Mr. J’s long-term incarceration and inability to earn wage income, CSSD granted the modification on December 12, 2016.⁵ The same day, it issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal.⁶ The

1 Exhibit 1.
2 CSSD pre-hearing brief, p. 1.
3 Exhibit 2.
4 CSSD pre-hearing brief, p. 1.
5 Exhibit 3.
6 Exhibit 4.

modified order reduced Mr. J's support obligation to the state minimum of \$50 per month, effective December 1, 2016.

Ms. L appealed.⁷ She asserted that Mr. J has other sources of income, including possible life insurance proceeds and income-producing investments, because he inherited more than \$1 million from his mother when she passed away in 2012.⁸ Therefore, Ms. L argued, Mr. J's support obligation should not be reduced.

The hearing was held by telephone on February 6, 2017. Mr. J and Ms. L represented themselves. Child Support Specialist Delinda Cain represented CSSD. The record remained open after the hearing for additional evidence of Mr. J's income; it closed on February 27, 2017.⁹

III. Discussion

As the person who filed the appeal in this case, Ms. L has the burden of proving by a preponderance of the evidence that the Modified Administrative Child Support and Medical Support Order is incorrect.¹⁰

Child support orders may be modified upon a showing of "good cause and material change in circumstances."¹¹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes a "material change in circumstances" has been established and the order may be modified. Mr. J's child support amount has been \$937 per month since 2009. Thus, a change of \$140.55 or more would be sufficient to warrant modification in this case.¹²

A modification is effective beginning the month after the parties are served with notice that a modification has been requested. CSSD sent the parties to this case notice of the modification review in November 2016, so the modification is effective December 1, 2016.¹³

Civil Rule 90.3(a)(1) provides that a noncustodial parent's child support amount is to be calculated from his or her "total income from all sources," minus specified mandatory and discretionary deductions. The rule defines "income" broadly, and it identifies many possible

⁷ Exhibit 5.

⁸ L Exhibit A; L testimony.

⁹ Following the hearing, Mr. J was ordered to provide additional evidence of his income, including an income affidavit, recent bank statements, and recent investment account statements, since those items were specifically discussed during the hearing. Three weeks after the hearing, Ms. L asked that Mr. J also be ordered to provide his most recent tax return. As this request was not timely made, it was not addressed.

¹⁰ 15 AAC 05.030(h); 2 AAC 64.290(e).

¹¹ AS 25.27.190(e).

¹² \$937 x 15% = \$140.55.

¹³ 15 AAC 125.321(d).

income sources. The sources that are potentially relevant to this case include employment income, as well as possible payments from annuities, income from trusts, capital gains (to the extent they represent a regular source of income), income from life insurance, and income from an interest in an estate.¹⁴

Mr. J is not currently employed, and he is not capable of earning any significant income while he is incarcerated. He will be able to work if he is released on an ankle monitor; however, he does not have control over the timing of his release. During the hearing, Mr. J expressed his desire to financially support his children. He plans to seek employment as soon as he is released from jail. He has the training and experience to be a power lineman, which was his former occupation. He hopes to eventually return to this work. However, the job requires a valid commercial driver's license. Due to his criminal conviction, Mr. J may not be eligible for this license for several more years. In the meantime, Mr. J is not sure what kind of employment or wages are likely to be available to him.

Given the uncertainty surrounding the timing of Mr. J's release and his future employment prospects, it is not possible to take his likely future wages into consideration in this appeal. Both parties were advised that another modification review can be requested once Mr. J is released and able to work again.

Ms. L contends that Mr. J should be deemed to be voluntarily unemployed. She pointed out that he is incarcerated because of his own poor choices, for which Z should not be penalized.¹⁵ She argues that Mr. J should not be rewarded with such a substantially reduced child support obligation, given his history of bad decisions and poor financial planning.

Ms. L's perspective is understandable. However, the law requires a different approach. While he is incarcerated and unable to earn any significant income, Mr. J cannot be found to be voluntarily and unreasonably unemployed. Therefore, it is not possible to impute potential income to him, as Ms. L requests. Once he is released from jail and able to seek employment, the issue of voluntary and unreasonable unemployment or underemployment can be addressed, if appropriate.

Ms. L argues that Mr. J has lived a comfortable lifestyle since 2012, even though he has not been employed since he inherited from his mother.¹⁶ She observed that he has purchased

¹⁴ Civil Rule 90.3, Commentary III.A.

¹⁵ L post-hearing submission, dated February 26, 2017. She also noted that, when he inherited, Mr. J could and should have set money aside to provide for his children in the future.

¹⁶ See L Exhibits C, D, E.

homes and vehicles in recent years, and he has hired private attorneys to handle his legal matters.¹⁷ Although his payments have been irregular, he also periodically has made substantial child support payments.¹⁸ Based on his significant inheritance, lifestyle and discretionary expenditures, Ms. L asserted that Mr. J likely remains capable of continuing to pay child support of \$937 per month, even while he is incarcerated.

Mr. J agreed that he has lived off his inheritance since 2012, and he has made some significant purchases. However, he asserted that he has spent all the proceeds from his mother's estate, and he no longer has any income-producing assets or life insurance proceeds. He explained that he used the proceeds from his mother's life insurance policy to pay past-due child support for all of his children. The record supports this assertion, since Mr. J's payment history for Z shows that CSSD received payments totaling \$39,678.57 between December 2014 and May 2015.¹⁹ At that time, Mr. J apparently also made significant payments of child support owed for his older children.

In addition, Mr. J credibly testified that he no longer has any significant assets or income from other sources. After the hearing, he submitted an affidavit, which reaffirmed his prior testimony that he has no remaining sources of income.²⁰ He also submitted financial statements that further support his assertion. His Wells Fargo and U.S. Bank accounts were both closed in November 2016, because they were in overdrawn status for an extended period.²¹ Similarly, a January 2017 Oppenheimer statement shows a total portfolio value of \$14.62.²² It appears that he has no other bank or investment accounts.²³

This information supports the finding that, more likely than not, Mr. J currently has no income-producing assets, and he does not have other sources of income while he is incarcerated. Mr. J indicated that he is trying to sell one last piece of property, valued at roughly \$45,000, to pay off his remaining debts. However, he does not expect to receive any of the proceeds from the sale after he pays the past-due taxes on the property and his child support arrears.²⁴

¹⁷ Exhibit 5; L Exhibits D, F.

¹⁸ Exhibit C; L pre-hearing brief.

¹⁹ Exhibit C. The CSSD hearing representative also indicated that CSSD records document a \$20,119 withholding from life insurance proceeds to pay child support obligations.

²⁰ J Child Support Guidelines Affidavit.

²¹ J post-hearing submission dated February 19, 2017.

²² *Id.*

²³ *Id.*

²⁴ J testimony; J post-hearing submission dated February 19, 2017.

IV. Conclusion

Based on the evidence in the record, CSSD correctly concluded that Mr. J has no income from any sources while he is subject to long-term incarceration. Therefore, it properly set his child support obligation for Z at the state minimum amount of \$50 per month, effective December 1, 2016. No variance under Civil Rule 90.3(c) was requested or granted. Once Mr. J is released and able to work, any party may request another modification review.

V. Child Support Order

- The Modified Administrative Child Support and Medical Support Order dated December 12, 2016, is affirmed and remains in full force and effect.

DATED: February 28, 2017.

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 31st day of March, 2017.

By: *Signed* _____
 Signature
 Jerry Burnett _____
 Name
 Deputy Commissioner _____
 Title

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