

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

In the Matter of)	
)	
F M)	OAH No. 17-0200-CSS
<hr style="width:40%; margin-left:0;"/>)	Agency No. 001135772

CORRECTED DECISION AND ORDER¹

I. Introduction

F M petitioned for modification of an existing child support order. On January 31, 2017, the Child Support Services Division (CSSD) issued a Modified Administrative Child Support and Medical Support Order which ordered Mr. M, the obligor, to pay \$50 per month in child support.² Ms. C appealed the modification.³

A telephonic hearing was held on March 29, 2017. Mr. M and Ms. C testified and Brandi Estes, Child Support Specialist, presented CSSD’s position.

The evidence supports a finding that CSSD’s January 31, 2017, Modified Administrative Child Support and Medical Support Order is correct.

II. Facts

Mr. M and Ms. C are the parents of L (DOB 00/00/2004) and N (DOB 00/00/2006).⁴ Ms. C is the custodial parent. Mr. M owes \$40,810.00 in child support and has not made a voluntary payment since 2014.⁵ Ms. C provides all support for the children.

On August 18, 2016, Mr. M requested modification of an existing child support order.⁶ On August 29, 2016, CSSD spoke with Mr. M’s physician who verified that Mr. M is unable to work. CSSD, however, could not complete the modification because it did not have the necessary documentation. On November 8, 2016, Mr. M provided a health status report from his

1 The original decision had a typographical error on page 3. Corrected per 2 AAC 64.350(a).
2 Ex. 5.
3 Ex.6.
4 L and N’s birthdates were corrected from the originally issued proposed decision.
5 Estes statement.
6 Pre-hearing brief.

physician to CSSD.⁷ The health status report indicated that Mr. M is unable to work full or part-time due to lower back pain with degenerative disease.⁸

CSSD served a Notice of Petition for Modification of Administrative Child Support Order on the parties.⁹ CSSD received Child Support Guideline Affidavits from Mr. M on November 29, 2016.¹⁰ On January 31, 2017, CSSD issued a Decision on Request for Modification Review and Modified Administrative Child Support and Medical Support Order that ordered Mr. M to pay \$50 in monthly child support from December 1, 2016, forward.¹¹ Mr. M's previous order required him to pay \$251 per month in child support.¹²

On February 23, 2017, Ms. C filed an appeal of the modification order.¹³ Ms. C feels that Mr. M purposefully avoids responsibility for providing child support. Ms. C also believes that Mr. M is capable of performing some work, and should be required to apply for Social Security disability and participate in vocational rehabilitation training.¹⁴

Mr. M testified that he has been unable to work since a 2012 injury. Mr. M has three children from a subsequent relationship. Mr. M's receives \$886 from the Alaska Temporary Assistance Program, \$604 in Food Stamps, and a permanent fund dividend.¹⁵ Mr. M testified that he is applying for Social Security disability.

III. Discussion

As the person who filed the appeal, Ms. C has the burden of proving by a preponderance of the evidence that CSSD's modification order is incorrect.¹⁶ She has not met this burden.

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. Means-based sources of income, like ATAP and Food Stamps, are not

7 Ex. 1.

8 Ex. 1.

9 Ex. 2.

10 Ex. 3.

11 Ex. 4-5.

12 Ex. A5.

13 Ex. 8.

14 Neither CSSD nor the OAH has the authority to order Mr. M to attend vocational rehabilitation training.

15 Ex. A4.

16 AS 25.27.190(e).

counted as income for child support purposes.¹⁷ The minimum child support payment allowed by law is \$50 per month.¹⁸

Child support orders may be modified upon a showing of “good cause and material change in circumstances.”¹⁹ A child support calculation that results in a fifteen-percent change or greater to a child support order is considered a material change in circumstances.²⁰ A parent may obtain a reduction in the amount calculated, but only if he or she shows that “good cause” exists for the reduction. In order to establish good cause in this context, the parent must prove by clear and convincing evidence that “manifest injustice would result if the support award were not varied.”²¹

Mr. M’s income, other than the permanent fund dividend, is from means-based public assistance which is not included as income for purposes of child support.²² Therefore, for purposes of child support calculations, Mr. M has no income apart from his PFD. Therefore, CSSD correctly determined Mr. M’s monthly child support obligation is \$50 per month, the minimum allowed by law.

IV. Conclusion

Based on the evidence, the January 31, 2017, Modified Administrative Child Support Order and Medical Support Order is correct.²³

V. Child Support Order

- Mr. M has an ongoing child support obligation of \$50 per month, beginning December 1, 2016;
- All other provisions of the January 31, 2017, Administrative Child Support and Medical Support Order remain in effect.

DATED March 31, 2017.²⁴

Signed

Bride Seifert
Administrative Law Judge

¹⁷ 15 AAC 125.030(b)(2); Alaska Rule Civil Procedure 90.3 Commentary III.A.

¹⁸ 15 AAC 125.075(d); Alaska Rule Civil Procedure 90.3(c)(3).

¹⁹ AS 25.27.190(e).

²⁰ Civil Rule 90.3(h).

²¹ Civil Rule 90.3(c)(1); 15 AAC 124.075.

²² Alaska Rule Civil Procedure 90.3 Commentary III.A.

²³ The original proposed decision incorrectly stated July 31, 2017. Corrected per 2 AAC 64.350(a).

²⁴ The decision date remains unchanged after correction of typographical error.

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 18th day of April, 2017.

By: Signed
Signature
Bride A. Seifert
Name
Administrative Law Judge
Title

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