

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

In the Matter of)	
)	
M D. K)	OAH No. 17-0793-CSS
_____)	Agency No. 001213275

DECISION AND ORDER

I. Introduction

M D. K appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued on June 30, 2017. The modified order it adjusted Mr. K’s support amount for his son B to \$966 per month, effective May 1, 2017. The calculation accounted for child support Mr. K pays for two older children. Mr. K asserted he also should receive a deduction for child support he pays on a third older child’s case.

Mr. K met his burden to show that he is entitled to a deduction from income for court-ordered child support he pays on a third prior child’s case. However, the effective date of the court order in the third child’s case is July 1, 2017. Therefore, July is the first month in which the deduction applies in B’s case.

Mr. K’s support obligation for B remains \$966 per month for May and June 2017. Beginning July 1, 2017 and ongoing, it should be adjusted to \$842 per month.

II. Facts

A. Background

Mr. K and W C are the parents of B, age 2. B lives in No Name City 1 with Ms. C.

In April 2016, CSSD set Mr. K’s child support obligation for B at \$1,265 per month.¹ In late March 2017, Mr. K requested a modification, because the 2016 support order did not include a deduction from income for the child support he pays in his older children’s cases.² CSSD notified the parties of the modification petition on April 17, 2017.³ Mr. K submitted documentation showing that he pays monthly child support totaling \$2,571 for two of his prior children.⁴

On June 30, 2017, CSSD issued the Modified Administrative Child Support and Medical Support Order that is the subject of this appeal. CSSD first determined that Mr. K’s expected 2017

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

wage income is \$127,644.55.⁵ Based on the child support information Mr. K provided, CSSD allowed a \$2,571 deduction from income to account for ongoing child support payments he makes in his two older children's cases. It also allowed a deduction for Mr. K's contributions to his retirement plan. After other deductions for matters such as federal income taxes and Social Security/Medicare, Mr. K's income resulted in a \$966 monthly child support amount for B, effective May 1, 2017.

Mr. K appealed.⁶ In his written appeal request, he asserted that he pays child support for a third prior child. He attached two pages from an interim child support order in that child's case.⁷ The written appeal also argued that the 2016 Administrative Child Support and Medical Support order in B's case failed to consider the support he pays for any of his prior children. Mr. K therefore requested an adjustment to correct the prior child support order.

The hearing took place on August 8, 2017. Child Support Specialist Kimberly Sledgister appeared by telephone and represented CSSD. Mr. K received actual notice of the hearing, as evidenced by his signature on the green certified-mail return receipt card showing service of the Notice of Hearing in this case. However, he did not appear or answer a telephone call to his telephone number of record.⁸ Ms. C also did not appear or answer a telephone call to her number of record, and she did not participate.⁹

Neither parent contacted the Office of Administrative Hearings within ten days of the hearing to explain their non-participation, and the record closed on August 18, 2017. This decision is issued based on the written record.¹⁰

B. Material Facts

Mr. K lives in No Name City 2. He has worked for No Name Company for at least the last several years.¹¹ In 2016, he earned gross wages of \$122,566.62.¹² When CSSD processed Mr. K's

⁵ It calculated this amount based on Mr. K's most recent four consecutive quarter earnings from his job at No Name Co. (1st quarter 2017 + 2nd, 3rd, 4th quarter 2016.) See Exhibit 8; Exhibit 6, p. 7.

⁶ Exhibit 7.

⁷ Exhibit 7, pp. 2-3.

⁸ On the hearing date, a voice message was left at Mr. K's number of record, asking him to call the Office of Administrative Hearings (OAH) if he planned to participate further in the case.

⁹ On the hearing date, phone calls were made to several different telephone numbers for Ms. C. Some numbers were disconnected or no longer in service. A voice message was left at the number Ms. C apparently is currently using, asking her to contact OAH if she planned to participate in the hearing. The case file also includes a certified-mail return receipt showing service of the Notice of Hearing.

¹⁰ See 15 AAC 125.030(j). All submitted documents were admitted to the record.

¹¹ Exhibit 8.

¹² *Id.*

case, he had earned \$127,644.55 in gross wages over the most recent four quarters, from the second quarter of 2016 through the first quarter of 2017.¹³

Mr. K has at least three minor children who are older than B. He pays \$2,571 on two of the children's cases. He exercises equal shared custody of the third child. Beginning July 1, 2017, a court has ordered him to pay ongoing monthly support of \$618.59 for that child.¹⁴

III. Discussion

In child support matters, the person who files an appeal bears the burden of proof.¹⁵ Mr. K filed this appeal, so he must show that the June 30, 2017 Modified Administrative Child Support and Medical Support Order is incorrect.¹⁶

A child support order may be modified upon a showing of "good cause and material change in circumstances."¹⁷ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes that "material change in circumstances" has been established and the order may be modified. Mr. K's child support was previously set at \$1,265 per month, so a revised calculation that is at least \$189.75 higher or lower would be sufficient to warrant modification in this case.¹⁸

A modification becomes effective the month after the parties are served with notice of the petition to modify. In this case, the parties were served with that notice in April 2017, so the modification is effective May 1, 2017.

A. *Support Calculation and Prior Child Deduction*

Mr. K's written appeal request did not dispute CSSD's determination of his expected 2017 income. He argued that he is entitled to an increased deduction from income for the child support he pays on behalf of three prior children. The documentation he submitted supports this assertion.

Under Civil Rule 90.3(a)(1)(C), Mr. K's gross income should be adjusted to account for the child support he pays pursuant to court or administrative orders for his children from prior relationships. CSSD had been unaware of the support Mr. K pays for his third prior child. He provided the court order in that child's case when he filed his appeal. During the hearing, CSSD

¹³

Id.

¹⁴ Exhibit 7, pp. 2-3.

¹⁵ 15 AAC 05.030(h).

¹⁶ 2 AAC 64.290(e).

¹⁷ AS 25.27.190(e).

¹⁸ \$1,265 x 15% = \$189.75.

agreed that the modified order in this case should reflect the support Mr. K pays for all three of his prior children.

However, because the third child's support order went into effect on July 1, 2017, that is the first month in which Mr. K is entitled to a prior child deduction from income in B's case.

As a result, Mr. K is entitled to a prior child deduction from income of \$2,571 for the months of May and June 2017. This results in a \$966 support obligation, as CSSD previously calculated.

Starting July 1, 2017, Mr. K's prior child deduction increases to \$3,189.59 per month. Under Civil Rule 90.3(a), this results in a child support amount of \$842 per month.¹⁹

B. Modification of the 2016 Child Support Order

Mr. K's written appeal additionally requested a modification of the Administrative Child Support and Medical Support Order issued in 2016 in B's case, since that order did not include any deductions from income for child support Mr. K paid for his prior children.

Mr. K is correct that the 2016 child support order did not allow a deduction from income for his support of older children.²⁰ However, the issues on appeal in this case are limited to CSSD's June 30, 2017 Modified Administrative Child Support and Medical Support Order.

CSSD issued the prior order on April 18, 2016. Mr. K did not appeal, and the order has been final for more than a year.²¹ With limited exceptions, Alaska law generally prohibits retroactive modification of child support orders.²² However, CSSD offers a separate process through which a party may request relief from an administrative order after the appeal deadline.²³ Mr. K should contact CSSD and initiate a separate review if he would like to pursue this request.

IV. Conclusion

Through the information he provided during the appeal process, Mr. K showed by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order should be adjusted.

For May and June 2017, CSSD correctly allowed a \$1,265 deduction from income for child support Mr. K pays in two of his prior children's cases. This results in a \$966 monthly support amount in B's case.

¹⁹ Attachment A (from CSSD online calculator at: <https://webapp.state.ak.us/cssd/guidelinecalc/form>).

²⁰ Exhibit 1, p. 8.

²¹ Exhibit 1.

²² Civil Rule 90.3(h)(2).

²³ See AS 25.27.195; 15 AAC 125.125.

Beginning July 1, 2017, the monthly prior child deduction should increase to \$3,189.59, to reflect the additional court-ordered support in a third prior child's case. After all applicable deductions, this results in a \$842 monthly support amount for B. These calculations were made pursuant to Civil Rule 90.3(a), without variation under Civil Rule 90.3(c).

V. Child Support Order

- Mr. K's child support obligation for B is \$966 per month for the months of May and June 2017;
- Mr. K's support obligation for B is adjusted to \$842 per month, effective July 1, 2017 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated June 30, 2017 remain in full force and effect.

DATED: August 21, 2017.

By: Signed
Kathryn 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 6th day of September, 2017.

By: Signed
Signature
Kathryn A. Swiderski
Name
Administrative Law Judge
Title

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