

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL  
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of	)	
	)	
H C	)	OAH No. 17-1115-CSS
_____	)	Agency No. 001135576

**DECISION AND ORDER**

**I. Introduction**

H C appealed a Child Support Services Division (CSSD) decision denying his request to modify his child support obligation for his son, T. The custodian of record is K C.

The hearing took place by telephone on November 21, 2017. Mr. C represented himself. Ms. C could not be reached at her telephone number of record and did not participate.<sup>1</sup> Child Support Specialist Kimberly Sledgister represented CSSD. All submitted documents were admitted to the record, which closed at the end of the hearing.

Under the Civil Rule 90.3(a) primary custody formula, Mr. C's expected income and allowable deductions result in a monthly child support amount of \$839. It has been more than three years since Mr. C's support obligation was last reviewed. Therefore, CSSD agreed during the hearing that modification is appropriate. The evidence supports this conclusion.

Accordingly, the decision denying the modification is reversed. Mr. C's child support is modified to \$839 per month, effective August 1, 2017. Mr. C will work separately with CSSD on his request for a medical credit. That issue cannot be resolved in this decision.

**II. Facts and Proceedings**

Mr. C and Ms. C have one child, T, age 14.<sup>2</sup> T lives in Alaska with Ms. C, who has primary physical custody. Mr. C lives in Montana.

In October 2012, CSSD set Mr. C's child support obligation at \$954 per month.<sup>3</sup> It calculated this obligation based on employer-reported annual wages of \$82,326.<sup>4</sup> At that time, Mr. C worked in Idaho for Employer X. He worked for the same employer through February 2017,

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<sup>1</sup> There was no answer at the number of record and no option to leave a message. Efforts were made to contact Ms. C at two other numbers obtained from CSSD's file. One number was no longer in service; the individual who answered the other responded that it was a "wrong number." Ms. C received actual notice of the hearing. In a voice message left with OAH staff the day before the hearing, she indicated she had recently received the Notice of Hearing and she provided Mr. C's telephone number.

<sup>2</sup> Exhibit 1.

<sup>3</sup> *Id.*

<sup>4</sup> Exhibit 1, p. 7. Mr. C did not participate in the 2012 proceedings. C testimony.

when funding for his position was terminated. As of February 2017, his annual salary at Employer X was \$95,000.<sup>5</sup>

Mr. C was not employed for the next two months. He started a new job on May 1, 2017, working for Employer Y in Montana, where his gross annual salary is \$70,000.<sup>6</sup> Due to his reduced income, he requested a modification of his child support obligation.<sup>7</sup> On July 19, 2017, CSSD served each parent with notice of the modification request.<sup>8</sup> Mr. C submitted copies of two paystubs, covering the period from July 1, 2017 through July 31, 2017, along with his two most recent federal tax returns.<sup>9</sup>

CSSD determined that Mr. C's updated financial information did not result in a child support amount that differs from his prior obligation by 15% or more. Concluding that he had not shown a material change of circumstances, CSSD denied the modification request on September 14, 2017.<sup>10</sup> Mr. C appealed.<sup>11</sup>

### **III. Discussion**

As the party requesting an administrative hearing, Mr. C bears the burden to show by a preponderance of the evidence that CSSD should have granted his modification request.<sup>12</sup> He met that burden.

A parent is obligated both by statute and at common law to support his or her children.<sup>13</sup> 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 specified deductions. Mandatory deductions include items such as federal and state income taxes, Social Security taxes (or their equivalent, in cases in which a public employer has established an alternate plan), and Medicare taxes.<sup>14</sup> A deduction is also available for mandatory and voluntary contributions to a retirement or pension plan, up to a maximum of 7.5% of the parent's gross wages.<sup>15</sup>

During the hearing, Mr. C and the CSSD hearing representative engaged in a detailed review of Mr. C's paystub information to assess his income and allowable deductions. They agreed that

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<sup>5</sup> C testimony.

<sup>6</sup> C testimony; Exhibit 6, pp. 2, 7.

<sup>7</sup> Exhibit 2.

<sup>8</sup> Exhibit 3.

<sup>9</sup> Exhibit 4.

<sup>10</sup> Exhibit 5.

<sup>11</sup> Exhibit 6.

<sup>12</sup> 15 AAC 05.030(h).

<sup>13</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>14</sup> Civil Rule 90.3(a)(1)(A).

<sup>15</sup> Civil Rule 90.3(a)(1)(A)(v) and (a)(1)(B).

Mr. C's 2017 salary from Employer Y results in gross annual income of \$70,000. Based on the consistent deductions shown in each of his paystubs, they also agreed he is entitled to the following monthly deductions: federal income tax of \$466.14; Medicare tax of \$77.90; contributions to the Montana alternate plan for Social Security, called TRS, of \$475.42; retirement contributions of \$408.34; and Montana state taxes of \$206.<sup>16</sup>

Mr. C also argued that he should receive a deduction for out-of-pocket health insurance expenses to cover himself and his significant other. However, after he and CSSD had agreed on every other allowable deduction except this one, he abandoned the argument in favor of a quick and uncontested resolution to the case.

CSSD recalculated Mr. C's child support obligation using the figures discussed above. They result in a child support obligation of \$839 per month for one child.<sup>17</sup> Because the prior support order has been in place for five years, CSSD agreed it should be adjusted to reflect Mr. C's current financial circumstances. Mr. Cs also agreed to the revised calculation and the \$839 monthly amount.

The evidence supports this child support calculation, which is based on the actual income and deductions reflected in Mr. C's paychecks. The evidence also supports the decision to modify the 2012 order due to the passage of time. The recalculated \$839 obligation is a 12% change from the prior \$954 amount.<sup>18</sup> CSSD is required to modify a child support order when the revision is 15% greater or less than the prior amount.<sup>19</sup> However, when three or more years have elapsed since a support order was issued or last modified, CSSD may modify it even if the 15% threshold is not satisfied.<sup>20</sup> The modification takes effect the month following the date on which CSSD put the parties on notice of the request.<sup>21</sup> Therefore, this modification is effective beginning August 1, 2017.

Mr. C raised one other issue during the hearing. He has been providing health insurance for T, and he requested a credit against his ongoing support obligation for a portion of that cost.<sup>22</sup> He submitted information showing his additional cost for providing T's medical insurance.<sup>23</sup> CSSD

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<sup>16</sup> See Exhibit 6, pp. 4-6; Exhibit A (CSSD revised child support calculation).

<sup>17</sup> Attachment A. The amount is rounded down to the closest whole number.

<sup>18</sup> [\$954 - \$839 = \$115. \$115/\$954 = 12%.]

<sup>19</sup> 15 AAC 125.321(b)(1).

<sup>20</sup> 15 AAC 125.321(b)(2)(C).

<sup>21</sup> 15 AAC 125.321(d).

<sup>22</sup> See Civil Rule 90.3(d)(1)(B).

<sup>23</sup> Exhibit 2, p. 2.

does not yet have other needed information, such as Mr. C's cost for providing T's dental and vision coverage.

Mr. C likely is entitled to a credit for the share of T's health insurance cost that is attributable to Ms. C. However, this issue cannot be resolved here. The medical credit is applied as a deduction from the obligor-parent's ongoing obligation; it does not affect the calculation of the obligation itself.<sup>24</sup> CSSD regulations set out a separate process for determining the appropriate medical credit.<sup>25</sup> Therefore, as discussed during the hearing, CSSD will work separately with Mr. C to address this issue.

#### **V. Conclusion**

Mr. C met his burden to show that his child support obligation should be modified. Under Civil Rule 90.3(a), his expected income and allowable deductions result in an ongoing support amount of \$839 per month for one child. No variance was requested or granted.

#### **IV. Child Support Order**

- Mr. C is liable for child support for T in the amount of \$839 per month, effective August 1, 2017 and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated October 31, 2012, remain in full force and effect.

DATED: November 22, 2017.

By: Signed \_\_\_\_\_  
Kathryn Swiderski  
Administrative Law Judge

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<sup>24</sup> See Civil Rule 90.3(d)(1)(B); Exhibit 1, p. 7.

<sup>25</sup> See 15 AAC 125.432(g).

## 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 6<sup>th</sup> day of December, 2017.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Deputy Chief ALJ  
Title

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