

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

IN THE MATTER OF: )

L. C. C. )

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) OAH No. 04-0119-CSS

) CSSD NO. 001068536

) DOR NO. 040705

**DECISION AND ORDER**

**I. Introduction**

This case involves the Obligor L. C. C.'s appeal of a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on September 23, 2004. The Obligee child is A., DOB 00/00/97.

The formal hearing was held on December 2, 2004. Mr. C. did not appear; the Custodian, A. J. S., did not participate. David Peltier, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on December 13, 2004.

Kay L. Howard, Administrative Law Judge for the Alaska Office of Administrative Hearings, was appointed to hear this appeal by the Chief Administrative Law Judge, Terry L. Thurbon. Having reviewed the record in this case and after due deliberation, I have concluded Mr. C.'s appeal should be granted; his modified child support from August 2004 forward should be calculated from his estimated 2004 income, not the higher income he received in 2003.

**II. Facts**

**A. History**

Mr. C.'s previous support order was set at \$175 per month for A. in 1998.<sup>1</sup> Ms. S. requested a modification on June 25, 2004.<sup>2</sup> On July 6, 2004, CSSD sent the parties a Notice of Petition for Modification of Administrative Support Order.<sup>3</sup> On September 23, 2004, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. C.'s modified ongoing child support at \$858 per month, effective August 1, 2004.<sup>4</sup> Mr. C. filed an appeal on September 30, 2004.<sup>5</sup>

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<sup>1</sup> Exh. 3.

<sup>2</sup> Exh. 1.

<sup>3</sup> Exh. 2.

<sup>4</sup> Exh. 3.

<sup>5</sup> Exh. 5.

Mr. C. did not appear for the formal hearing. CSSD stated it used Mr. C.'s last four consecutive quarters of earnings at a local car dealership to determine his income at \$67,812.11.<sup>6</sup>

Although Mr. C. did not appear at the hearing, his appeal states that he formerly was the sales manager at the car dealership, but he was fired from the job in March 2004.<sup>7</sup> Mr. C.'s appeal further states that he was unemployed for one month, then in April 2004, he was rehired as a salesman earning just his commission.<sup>8</sup> He said his income has changed dramatically as a result of being a salesman instead of the sales manager.

CSSD provided a copy of Mr. C.'s earnings report that shows in the second quarter of 2004, he earned \$10,400, which is less than half of what he earned during two quarters of 2003, when he was a sales manager.<sup>9</sup> This figure supports Mr. C.'s statement that as of April 2004 he has been earning less as a salesman than he did as a sales manager.

### **B. Findings**

Based on the evidence in the record and after due consideration, I hereby find:

1. Mr. C. met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h);
2. Mr. C.'s estimated earnings for 2004 are \$44,743;
3. Including the \$919.84 PFD for 2004, Mr. C.'s estimated 2004 income equals \$45,662.84, which results in a child support amount of \$599 per month.

### **III. Analysis**

Mr. C. filed an appeal on September 30, 2004.<sup>10</sup> However, he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the person requesting the hearing fails to appear.

A parent is obligated both by statute and at common law to support his or her children.<sup>11</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on

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<sup>6</sup> Exh. 4.

<sup>7</sup> Exh. 5 at pg. 2.

<sup>8</sup> *Id.*

<sup>9</sup> Exh. 6.

<sup>10</sup> Exh. 5.

<sup>11</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

his or her "total income from all sources." Modification of child support orders may be made upon a showing of "good cause and material change in circumstances."<sup>12</sup> If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established. A modification is effective beginning the month after the parties are served with notice that a modification has been requested.<sup>13</sup>

CSSD determined Mr. C. earned a total of \$67,812.11 from the third quarter of 2003 through the second quarter of 2004.<sup>14</sup> From this figure, CSSD calculated Mr. C.'s modified child support at \$858 per month, effective August 2004. Had Mr. C. not filed a long letter explaining his job change back to salesman as of April 2004, CSSD's modified child support figure would have been affirmed. However, since Mr. C. filed a statement that said he was back to earning salesman's commissions, and his earnings report confirms the statement, his modified child support should be recalculated based on the best estimate of his actual 2004 income.

Mr. C. earned \$13,543 in the first quarter of 2004, and \$10,400 in the second quarter.<sup>15</sup> Since the second quarter begins in April, and Mr. C. testified he started earning salesman's income again in April 2004, his earnings during the second quarter reasonably reflect what his income would be for each subsequent quarter. Mr. C.'s second quarter income should be applied to the third and fourth quarters of 2004. Adding all the quarters of 2004 together results in estimated earnings of \$44,743 for 2004. When the PFD is added, Mr. C.'s total annual income is estimated at \$45,662.84, which results in a child support calculation of \$599 per month. This is the amount at which Mr. C.'s modified ongoing child support should be set.

#### **IV. Conclusion**

CSSD calculated Mr. C.'s modified child support at \$858 per month, based in part on earnings he received in 2003 when he was the sales manager at a local car dealership. However, Mr. C. lost his job as the sales manager and was rehired as a salesman in April 2004. His estimated income for 2004 is \$45,662.84, which results in a child support calculation of \$599 per month. Mr. C.'s child support should be modified to that amount effective August 2004.

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<sup>12</sup> AS 25.27.190(e).

<sup>13</sup> 15 AAC 125.321(d).

<sup>14</sup> Exh. 4.

<sup>15</sup> Exh. 6.

### III. Child Support Order

- Mr. C. is liable for modified ongoing child support in the amount of \$599 per month, effective August 1, 2004.

DATED this 4th day of May, 2005.

By: Signed  
Kay L. Howard  
Administrative Law Judge

### Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry L. Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order concerning the child support obligation of L. C. C. be adopted as of this date and entered in his file as the final administrative determination in this appeal.

Under AS 25.27.062 and AS 25.27.250 the Obligor's income and property are subject to an order to withhold. Without further notice, a withholding order may be served on any person, political subdivision, department of the State or other entity.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the adoption of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, be addressed: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 4th day of May, 2005.

By: Signed  
Terry L. Thurbon  
Chief Administrative Law Judge

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