

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

IN THE MATTER OF: )

M. T. W. )

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) OAH No. 04-0134-CSS

) CSSD NO. 001115164

) DOR NO. 040729

**DECISION AND ORDER**

**I. Introduction**

This case involves the Custodian K. D. W.'s appeal of a Modified Administrative Child Support and Medical Support Order the Child Support Services Division (CSSD) issued in Ms. W.'s case on September 23, 2004. The Obligee child is K., DOB 00/00/98.

The formal hearing was held on December 12, 2004. The Obligor parent, M. T. W., appeared by telephone; the Custodian, K. D. W., appeared in person. Andrew Rawls, Child Support Specialist, represented CSSD. The hearing was tape-recorded. The record closed on January 7, 2005.

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. W.'s appeal should be denied and CSSD's Modified Administrative Child Support and Medical Support Order should be affirmed in Ms. W.'s case.

**II. Facts**

**A. History**

Ms. W.'s previous support order was set at \$192 per month for the child K. in August 2003.<sup>1</sup> Ms. W. requested a modification on June 17, 2004.<sup>2</sup> On July 7, 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.

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<sup>1</sup> Pre-Hearing Brief at pg. 1.

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

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

The order modified Ms. W.'s child support to \$50 per month, effective August 2004.<sup>4</sup> Mr. W. filed an appeal on October 6, 2004.<sup>5</sup>

At the formal hearing, Mr. W. stated Ms. W. is capable of working, and he believes she should have to find a job in order to provide more than \$50 per month support for K. He said Ms. W. had formerly worked in a mall at the Disney store, and she could do that again. Mr. W. added he has been forced to work at minimum wage jobs before, but now he has advanced to the point he is working in the no name department at a local grocery store. He said Ms. W. can get a minimum wage job if necessary, and work for her promotions, too. He stated she does not have a medical condition that would prevent her from working, so he believes she should have to pay more than \$50 per month.

Ms. W. also provided testimony. She stated Mr. W. does not know anything about her circumstances, particularly where she lives, what the work conditions are in her locale, or even whether she has a vehicle with which to get back and forth to work.

Ms. W. stated she is receiving public assistance benefits and going through a GED program in order to enter vocational training and acquire work skills that will enable her to be self-supporting. Ms. W. stated she has not worked since 2001, when she earned \$7 per hour as a sales clerk. She said she suffered a herniated disc after her second child was born, and is now under doctor's orders not to lift over 20 pounds, or stay in one position for longer than two hours at a time. Ms. W. stated she hoped to complete the GED program within a month or two, after which she would begin vocational training in order to learn clerical or related skills.

CSSD said in its closing statement that in general, noncustodial parents are expected to work to support their children. But in Ms. W.'s case, her efforts to obtain a GED and vocational training will ultimately lead to a higher income that will benefit K. CSSD argued that the \$50 per month child support order is correct and either party can petition for modification in the future.

After the hearing, Ms. W. filed a letter from her doctor that states she cannot lift, push or carry more than 20 pounds, and she may not walk, sit or stand for more than two hours at a time.<sup>6</sup> CSSD filed a copy of Ms. W.'s 2003 child support calculation, which indicates her

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

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

<sup>6</sup> Exh. 8.

support was set at \$192 per month from income that was imputed to her at \$7 per hour based on her 2001 employment.<sup>7</sup>

### **B. Findings**

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

1. Mr. W. did not meet 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. Ms. W. is unemployed and receiving public assistance benefits. At the same time, she is working to obtain her GED and vocational training in order to get a better job in the future;
3. CSSD correctly calculated Ms. W.'s modified child support at \$50 per month, effective August 2004.

### **III. Discussion**

The issue raised in this appeal is whether CSSD used the correct income figure to calculate Ms. W.'s modified child support amount. A parent is obligated both by statute and at common law to support her or her children.<sup>8</sup> Civil Rule 90.3(a)(1) provides that an Obligor's child support amount is to be calculated based on her 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>9</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.

Mr. W. filed the appeal, asserting Ms. W. is able to work, and that she should have to obtain even a minimum wage job in order to pay more support than \$50 per month.

CSSD's modified order should be affirmed because Ms. W. is not earning income at the present time. She is participating in a GED and vocational training program that ultimately should provide her with an income adequate to support herself and her dependents. Forcing Ms. W. to find a minimum wage job would not allow her to become self-supporting; rather, it would simply prolong her reliance on public resources and keep her child support obligation at the

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<sup>7</sup> Exh. 10 at pgs. 10-12.

<sup>8</sup> *Matthews v. Matthews*, 739 P.2d 1298, 1299 (Alaska 1987) & AS 25.20.030.

<sup>9</sup> AS 25.27.190(e).

lower end of the spectrum. Income should not be imputed to Ms. W. in order to inflate her child support amount.

Although Ms. W. established she has back problems that prevent her from certain activities, the decision in this case does not rely on her physical condition. Ms. W. is participating in an educational and vocational program that will enable her to seek higher paying employment in the future. The decision in this matter would remain the same even if Ms. W. did not have health problems.

**IV. Conclusion**

Mr. W. did not meet his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect. CSSD's order should be affirmed.

**V. Child Support Order**

1. The September 23, 2004, Modified Administrative Child Support and Medical Support Order is affirmed.
2. Ms. W. is liable for modified ongoing child support in the amount of \$50 per month, effective August 2004.

DATED this 1st day of June, 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 M. T. W. be adopted as of this date and entered in the 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 1<sup>st</sup> day of June, 2005.

By: Signed \_\_\_\_\_  
Terry L. Thurbon  
Chief Administrative Law Judge

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